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October 2, 2002

Case No. A-552-801
PUBLIC DOCUMENT

The Honorable Donald L. Evans
Secretary of Commerce
U.S. Department of Commerce
Central Records Unit – Room 1870
14th Street and Constitution Ave., N.W.
Washington, D.C. 20230

Attn: Albert Hsu; George Smolik; Shauna Lee-Alaia; Alex Villanueva

Re: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam

Dear Secretary Evans:

On behalf of the Vietnam Association of Seafood Exporters and Producers and its individual members, we submit the attached brief in response to the Department's August 14, 2002 request for comments on Vietnam's status as either a market-economy or non-market economy country (67 Fed. Reg. 52942). Please contact the undersigned if you have any questions.

Respectfully submitted,

William J. Clinton
K. Minh Dang
Edmund W. Sim
Keir A. Whitson

Counsel to the Vietnam Association of Seafood Exporters and Producers

CERTIFICATE OF SERVICE

I, Keir A. Whitson, of White & Case, certify that on the 2nd day of October, 2002, a copy of the foregoing submission was served upon the following interested parties by hand at the addresses indicated below:

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October 2, 2002

UNITED STATES DEPARTMENT OF COMMERCE

PUBLIC DOCUMENT

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In the Matter Of:

CERTAIN FROZEN FISH
FILLETS FROM VIETNAM

Inv. No. A-552-801

COMMENTS ON THE DEPARTMENT'S CONSIDERATION OF THE MARKET ECONOMY STATUS OF VIETNAM

THE VIETNAM ASSOCIATION OF SEAFOOD EXPORTERS AND PRODUCERS ("VASEP") AND ITS INDIVIDUAL MEMBERS

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October 2, 2002

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I. Introduction

Summary of Comment

There are two compelling reasons for treating Vietnam as a market economy for purposes of US antidumping law: (i) a comparison between Vietnam and Kazakhstan (a) based upon objective assessments of Vietnam's economic progress to date made by the ADB, the IMF and the World Bank, and (b) focusing on each of the six statutory factors that must be considered under section 771 (18)(B) of the Tariff Act of 1930, strongly suggests that Vietnam meets or exceeds the level of progress achieved by Kazakhstan, a country granted market-economy status on March 25, 2002; and (ii) the substantial international commitments Vietnam has made to accelerate structural reform of its economy, including the commitments made in the Bilateral Trade Agreement between Vietnam and the United States and those made to multilateral financial institutions and regional political and economic organizations, far exceeds in breadth and depth any similar commitments made by Kazakhstan.

VASEP respectfully submits to the US Department of Commerce (the "Department") that there are two compelling reasons for treating Vietnam as a market economy for purposes of US antidumping law:

(i) Vietnam meets or exceeds the level of progress achieved by Kazakhstan which the Department graduated to market-economy status in its March 25, 2002 decision (the "Kazakhstan Decision")[1] and

(ii) The breadth and depth of the international commitments Vietnam has made to accelerate structural reform of its economy, including, inter alia, the commitments embedded in the Bilateral Trade Agreement between Vietnam and the United States (the "BTA") and other commitments made to the World Bank, the International Monetary Fund ("IMF"), the Asian Development Bank ("ADB"), the ASEAN Free Trade Area ("AFTA"), the Asia Pacific Economic Cooperation Forum ("APEC"), and as part of Vietnam's accession offer to the World Trade Organization ("WTO"), meet or exceed the level of progress expected of a market economy and far exceeds Kazakhtan's level of commitment to structural reform.

The Department therefore should treat Vietnam as a market economy for this investigation and all future antidumping investigations.

[1] Memorandum on Kazakhstan Non-Market Economy Analysis (Dep't Commerce March 25, 2002) (analysis indicating successful graduation to market economy status) (hereinafter "Kazakhstan Decision"), *available at* http://ia.ita.doc.gov/download/kazakhstan-nme-status/kaz-nme-analysis.txt.

Vietnam's economic reform efforts compare very favorably with Kazakhstan, especially when one considers the performance of the Vietnamese economy and Vietnam's commitment to structural reform of its economy in the context of the geographical, demographic and socio-economic differences and similarities between Vietnam and Kazakhstan. Although Kazakhstan is physically a much larger country than Vietnam, covering over 2.7 million square kilometers compared to Vietnam's total land surface of about 300,000 square kilometers, Vietnam's estimated population of 78.7 million people is nearly five times the population of Kazakhstan.[2] Vietnam's gross domestic product ("GDP") exceeded $32.9 billion in 2001, compared to Kazakhstan's $22.6 billion GDP during the same year.[3] Vietnam's industrial sector represents 37.8 percent of GDP, compared to the industrial sector in Kazakhstan which provides 31.9 percent of total GDP. The rate of industrial production growth in 2001 was similar in both countries, with Kazakhstan's industrial output growing at 14.9 percent and Vietnam's industrial sector growing at 10.3 percent.[4] Vietnam is a growing force in international trade, with $15.1 billion in exports and $16.0 billion in imports in 2001. Kazakhstan, by comparison, exported $9.6 billion in goods in 2000, and recorded $6.9 billion in imports. Both countries reported similar external debt in 2001.[5] With greater demographic pressures and a comparative lack of resources, Vietnam's reform agenda has had to be more comprehensive than Kazakhstan's efforts to date.

In its Summary of the Kazakhstan Decision, the Department noted:

> Our analysis indicates that Kazakhstan has successfully made the transition to a market economy.
>
> As a result of economic and institutional reforms undertaken since the breakup of the Soviet Union in 1991, Kazakhstan's currency is now fully convertible for current account purposes. Wage reforms are well advanced in Kazakhstan, with workers able to unionize and negotiate wages and benefits on an individual and collective basis. Kazakhstan is open to foreign investment, and investors have responded, particularly into the oil, gas, and metals sectors. The GOK has privatized most sectors of the economy, although a number of large companies remain in majority state ownership. The allocation of resource decisions in Kazakhstan now rests with the private sector, with the GOK largely limiting price regulation to natural monopolies. In addition, the commercial banking sector behaves as a financial intermediary.
>
> Despite Kazakhstan's successful reforms, some problems remain. Foremost among these is that privatization efforts in Kazakhstan's

---

[2] *See, e.g.,* www.economist.com/countries/kazakhstan, www.economist.com/countries/vietnam, www.worldbank.org/data/countrydata/aag/vnm_aag.pdf.
[3] *See* World Bank, *World Bank Data and Statistics by Country, available at* www.worldbank.org/data/countrydata/countrydata.html.

[4] *Id.*
[5] *Id.*

remaining state-owned enterprises ("SOEs") have slowed markedly since 1997, in part because of GOK concerns about possible social unrest if it acts too quickly in forcing those SOEs that are insolvent into bankruptcy. In addition, wage arrears are a direct result of the slowdown in privatization efforts, and until recently, they were largely responsible for dragging down living standards. [6]

VASEP submits that Vietnam compares quite favorably to Kazakhstan in relation to each of the six statutory factors the Department must consider under section 771 (18)(B) of the Tariff Act of 1930, as amended (the "Act").[7] Each of the factors will be discussed in detail below drawing upon, where possible, IMF, World Bank or ADB data and analytical conclusions.

The case for market-economy treatment for Vietnam is even stronger when one considers the breadth and depth of Vietnam's commitments to structural reform, made clear in treaties, international agreements and reports of multilateral institutions. Unlike Kazakhstan, which has yet to make commitments of similar scope, Vietnam's commitments under the BTA and other international economic and investment agreements include provisions related to trading rights, tariff reductions, elimination of import quotas, foreign investment in the service sector, the adoption of WTO-consistent trade-related investment measures, the enforcement of intellectual property protections that exceed WTO standards, and guarantees of greater transparency in conducting trade with other countries.[8] Such commitments exceed those of Kazakhstan.

VASEP is therefore confident that the Department -- after comparing Vietnam's economy to that of Kazakhstan, upon reviewing objective and authoritative IMF and World Bank assessments of Vietnam's economic progress to date, and after considering the significant trade and investment commitments codified in the BTA or made by Vietnam in the context of its relationship with multilateral institutions and regional organizations -- will conclude that Vietnam has also made a successful transition to a market economy and must be treated as one for purposes of this and all future antidumping proceedings.

---

[6] *See* Kazakhstan Decision at 1.

[7] 19 U.S.C. § 1677 (18) (2002).

[8] *See* World Bank, VIETNAM ECONOMIC MONITOR, at 8 (Autumn 2001), *available at* http://www.worldbank.org.vn/data_pub/reports/Bank1/rep33/econ_monitor_aut2001. The Vietnam Economic Monitor is issued by the World Bank in Vietnam twice a year (spring and autumn). It reports on recent economic performance (Part I) and progress on the Government's Reform Agenda (Part II).

II. The Department's Analytical Approach

Summary of Comment

As explained in the Kazakhstan Decision, the Department does not take a mechanical approach in its analysis of a country's economy based upon the six statutory factors. A country does not need to fully meet every factor relative when compared to other market economies. But the Department must be able to determine that economic reforms have reached a threshold level such that the country can be considered to have a functioning market economy in which prices and costs exist that can be tied to the US antidumping law.

The Kazakhstan Decision made clear the approach of the Department under section 771(18)(B) of the Act. Section 771(18)(B) requires that the Department take into account the following six factors:

> (1) The extent to which the currency of the foreign country is convertible into the currency of other countries;
>
> (2) The extent to which wage rates in the foreign country are determined by free bargaining between labor and management;
>
> (3) The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;
>
> (4) The extent of government ownership or control of the means of production;
>
> (5) The extent of government control over the allocation of resources and over the price and output decisions of enterprises; and
>
> (6) Such other factors as the administering authority considers appropriate.[9]

The Department took care to note in the Kazakhstan Decision that it did not have a mechanical approach in its analysis of a country's economy based upon the six statutory factors.[10] According to the Department,

[9] 19 U.S.C. § 1677 (18) (2002)

[10] *See* Kazakhstan Decision at 4 - 5.

> [T]hese factors have a common focus which is to ensure that market forces in the country are developed sufficiently to rely on a country's prices and costs in the Department's antidumping process. Prices and costs are central to the Department's dumping analysis and calculation of fair value. Prices and costs that the Department uses must therefore be meaningful measures of value. However, NME prices and costs are not, as a general rule, meaningful measures of value because they do not sufficiently reflect demand conditions or the relative scarcity of resources used in production. The problem with NMEs is not one of distorted prices, per se, since few, if any, market-economy prices are perfect measures of value, free of all distortions (e.g., taxes, subsidies, other government regulatory measures). The problem, instead, is the price formation process in NMEs (i.e., the absence of the demand and supply elements that individually and collectively make a market-based price system work and make the resulting prices reliable).
>
> In evaluating the six factors listed above, the Department recognizes that it is not sufficient that a country's economy is no longer controlled by the state. Rather, the Department must determine whether the facts applied to the factors as a whole demonstrate that the economy is operating under market principles. This test, however, does not require that countries be judged against a theoretical model or a perfectly competitive laissez-faire economy. Instead, the Department must evaluate the totality of facts in determining whether a country has met the standard of a market economy. The Department's determination is based on comparing economic reforms in the country to how other market economies operate, recognizing that market economies around the world have many different forms and features. Although it is not necessary that the country fully meet every factor relative to other market economies, the Department must determine that economic reforms have reached a threshold level such that the country can be considered to have a functioning market economy in which prices and costs exist that can be tied to the US antidumping law.[11]

Applying this analytical approach to Vietnam will lead to the conclusion that economic reforms in Vietnam have reached a threshold level such that the country can be considered to have a functioning economy in which prices and costs exist that can **AND SHOULD** be considered in any antidumping investigations undertaken by the Department.

[11] *See* Kazakhstan Decision at 4.

III. Overview of Vietnam's Economy and Commitment to Structural Reform

Summary of Comment

The general economic picture emerging from the assessments of the ADB, the World Bank and the IMF is that Vietnam is a poor and developing economy struggling with external difficulties yet managing to achieve solid growth under the impetus of an internationally well-regarded structural reform program. The favorable response of the international community overall is a strong indication that reform of the right kind is being carried out at the right pace. The scope of the BTA alone is sufficient to warrant a finding that economic reforms have reached a threshold level such that the country should be treated as a market economy.

Since the Department must "evaluate the totality of facts in determining whether a country has met the standard of a market economy,"[12] VASEP submits that the Department's section 771(18)(B) review of Vietnam's economy should begin with an overview of the current state of Vietnam's economy and its commitments to structural reform. The Department's review should be based upon the recognition that, as the Government of Vietnam ("GVN") and the US Government have noted in the Preamble of the BTA:

> Vietnam is a developing country at a low level of development, is in the process of economic transition and is taking steps to integrate into the regional and world economy by, inter alia, joining the Association of Southeast Asian Nations (ASEAN), the ASEAN Free Trade Area (AFTA), and the Asia Pacific Economic Cooperation forum (APEC), and working toward membership in the World Trade Organization (WTO).[13]

In spite of recent external difficulties, Vietnam's economic performance has received praise from the ADB, the World Bank and the IMF all of which, as will be seen below, link that performance to the country's determined pursuit of structural reform. That performance is indicative of a market economy.

1. Overview of Vietnam's Economy

[12] *Id.*

[13] *See* Preamble to the Agreement Between the United States of America and the Socialist Republic of Vietnam on Trade Relations, July 13, 2000, available at http://www.usvtc.org/BTA/6ta_text1.htm

In the Vietnam section of the Asian Development Outlook 2002, the ADB provides a good overview of the performance of the Vietnamese economy in 2001.[14] According to the ADB, GDP growth slowed moderately to around 6 percent in 2001, due to weakening exports and agricultural output. In spite of this, the economy remained fast growing, with stable prices and solid indicators of public finance and external debt. The overall assessment of the ADB was based upon the macroeconomic assessment and the survey of policy developments next summarized.

(i) Macroeconomic Assessment

Despite the slowdown in the global economy, ADB staff analysis for 2001 suggest that GDP in Vietnam grew by 5.8 percent (6.8 percent according to preliminary official estimates), representing one of the highest rates of expansion in the region. As external demand weakened throughout the year, particularly in the aftermath of the events of September 11th, domestic demand — mainly investment — became the main source of growth.[15]

On the supply side, the agriculture sector recorded weaker growth. The moderate 2.3 percent increase was due to a 1.7 percent decrease in rice output, a fall in the price of agricultural goods, and estimated growth of 5 percent in fisheries, the best-performing subsector. However, the deceleration in agriculture was more than offset by a strong performance in industry and construction.[16]

Growth in industry was estimated at 9.7 percent in 2001, on the back of manufacturing and construction strength. Manufacturing is estimated to have increased by 9.2 percent while construction recorded a robust performance of 13 percent, due to the implementation of infrastructure projects, urban development projects in major cities, particularly Hanoi and Ho Chi Minh City, and a real estate boom.[17]

Non-state activities grew by 20.3 percent in 2001, partly due to the vigorous impact of the Enterprise Law, which streamlined administrative procedures for doing business. The Law abolished 145 out of 400 licenses in 2000. Government decree no. 30 issued that year required 60 licenses to be abolished in 2001. Registration requirements were also simplified. As a result, the number of private enterprises surged in both 2000 and 2001. In the improved business environment, capital investment also increased.[18]

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[14] *See* ADB, *Asian Development Outlook 2002: II. Economic Trends and Prospects in Developing Asia: Southeast Asia*, *available at* http://www.adb.org/Documents/Books/ADO/2002/vie.asp, at 23.

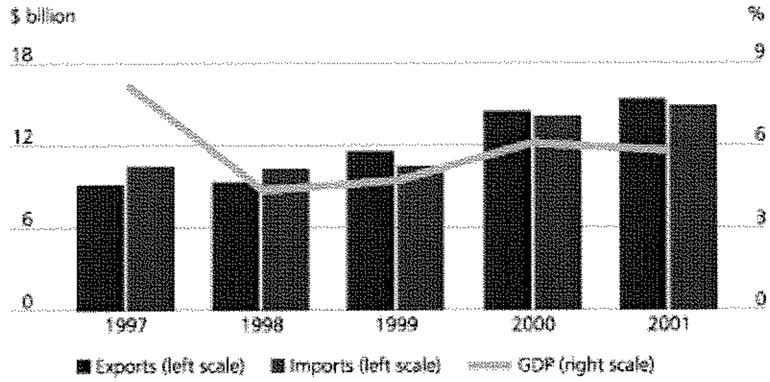
[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

FIGURE 2.13 **Exports, Imports, and GDP Growth, Viet Nam, 1997-2001**



Sources: General Statistical Office; State Bank of Viet Nam; staff estimates.

In 2001, growth in the services sector was estimated at 4.4 percent. Wholesale and retail trade maintained its modest improvement of 3.3 percent. Real estate services were the leading area, strengthening by an estimated 8 percent due to the buoyant real estate market. The easing of procedures for issuing land-use certificates, the granting of permission to buy land to overseas Vietnamese, and the recognition of Vietnam as one of the safer countries in the region all promoted land transactions. As a result, land prices in major urban centers such as Hanoi and Ho Chi Minh City increased by three or four times during the year.[19]

On the demand side, domestic demand was the main source of economic expansion in 2001, led by strong growth in investment stemming from low interest rates, the continuing creation of a large number of small- and medium-sized enterprises ("SMEs"), an increase in government capital spending, and a rise in foreign direct investment ("FDI") inflows. Investment's strong growth offset the deceleration in consumption, which increased by only 4.9 percent in 2001, due to declining rural incomes resulting from the weakening performance of the agriculture sector.[20]

Official data based on the new national poverty line introduced in 2001 by the Ministry of Labor, Invalids, and Social Affairs show a further decline in poverty to 16 percent by end-2001, from 17.2 percent at end-2000. While these data are not internationally comparable, the draft Comprehensive Poverty Reduction and Growth Strategy released in January 2002 suggests that poverty — as measured by an international poverty line developed by the General Statistical Office and the World Bank — has also continued to decline since the last household survey, from 37 percent in 1998 to about 32 percent in 2000. The urban unemployment rate fell somewhat from 6.4 percent in 2000 to 6.3 percent in the first 7 months of 2001. The gradual shift in labor from agriculture continued and was directed mainly toward the services sector.[21]

[19] *Id.*

[20] *Id.*

[21] *Id.*

The fiscal deficit in 2001 was estimated at 4.9 percent of GDP, lower than budgeted because revenues grew more than expected, to 21.2 percent of GDP. On the expenditure side, the fiscal stimulus stance translated into higher capital spending, primarily on infrastructure projects. Overall expenditure was estimated at 25.6 percent of GDP in 2001.[22]

The consumer price index remained fairly stable over the year with a slight increase of 0.8 percent by end-December 2001 on a year-on-year basis. Food prices fell through the first half of the year due both to the fall in world prices of agricultural commodities, particularly rice, and due to two years of bumper rice harvests at home. Food prices recovered in the second half of 2001, and the food price index rose by 6 percent by the end of the year, reversing the downtrend of the previous two years. The transport and communications price index declined by 4.7 percent, reflecting, among other elements, lower Internet and telephone prices, as the market became more competitive and tariffs were reduced. So that trends in the prices of nonfood goods and services could be more fully captured, the weighting of food items in the consumer price index basket was reduced from 60 percent to 47 percent in July 2001.[23]

Though interest rates fell during 2001, it is estimated that credit growth to the economy decelerated from a high 38.1 percent in 2000 to 21 percent in 2001. Credit growth to state-owned enterprises ("SOEs") slowed significantly, while accelerating by 27.5 percent to other sectors. This partly reflects the impact of the ongoing restructuring of the SOE sector on lending decisions by commercial banks.[24]

The number of companies listed on the stock exchange increased from five in 2000 to 11 by the end of 2001. The market is still at a very early stage of development. Share trading constituted almost all transactions in the market; bond trading accounted for only 6.4 percent of the total. The stock exchange market was volatile as the index soared to 500 by mid-2001 and then fell sharply to 235 by the end of the year.[25]

During the early months of 2001, currencies of other countries in the region depreciated against the US dollar even faster than did the dong. In real terms the dong appreciated against them. The dong depreciated more rapidly in the second half of the year. Just before the events of September 11th, the dong was trading at 15,150 to the US dollar. It then appreciated slightly, and remained at the 15,130 level until the end of 2001. This represented a depreciation of about 4 percent during the year.[26]

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[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

In 2001, export growth was estimated at 6.5 percent compared with 25.2 percent in the previous year. The fall in international crude oil prices accounted for a large part of this deceleration. However, non-oil export growth was also slower than in 2000. Agricultural exports remained depressed, particularly rice and coffee, whose higher volumes were insufficient to offset declining world prices. Manufactured exports fared relatively poorly, with slowing export growth of footwear and garments due to subdued demand from within the region and from the EU. Against a broad-based weakening in export performance, marine products were among the few strong performers. Import expansion too was sluggish at 6 percent. Petroleum import growth was slower, due in part to the decline in world oil prices but also to the slowing domestic economy, which also accounted for the decline in imports of machinery and equipment.[27]

On the current account, foreign exchange remittances surged in 2001, reflecting the impact of liberalization of regulations on foreign currency accounts and the permission granted to overseas Vietnamese to buy land. Current official transfers have remained broadly constant over the last few years. The current account surplus, excluding official transfers, was estimated at 1.5 percent of GDP in 2001.[28]

On the capital account, FDI commitments rose. During 2001, 458 foreign-invested projects were licensed with a total registered capital of $2.2 billion, representing an increase of 12 percent over the 2000 level. The pickup in FDI commitments reflects the improved climate for foreign enterprises following amendments to the Foreign Investment Law and the successful conclusion of prolonged negotiations on a number of large energy projects. Another positive trend was the increasing share of FDI in light industries and agriculture, as these are more labor intensive and have export potential. For 2001, the surplus on both the current and capital accounts contributed to a rise in official reserves from $3.3 billion in 2000 to $3.5 billion in 2001, representing 11 weeks of imports.[29]

(ii) Policy Developments

The lower fiscal deficit than projected in 2001 gives room for phasing in some of the costs of implementing SOE and banking reforms in 2002. By some estimates, the capital cost of such reforms could come close to 3-4 percent of GDP this year. The GVN also took steps to strengthen expenditure management, by endorsing, in September 2001, the Master Plan of Public Administration Reform for 2001-2010, which includes suggestions for public finance reform. In this regard, in an initial trial, the GVN plans to replicate the success of a pilot scheme of lump-sum allocations for operational costs of administrative agencies to major cities such as Hanoi and Ho Chi Minh City. In addition, to enhance predictability and to strengthen budget allocation for operation and

[27] *Id.*

[28] *Id.*

[29] *Id.*

maintenance, multiyear expenditure programming for education and transport was piloted in 2001, as opposed to the usual annual expenditure budgeting.[30]

The State Bank of Vietnam ("SBV") has been liberalizing its monetary policy. The base rate, which replaced the ceiling on dong borrowings, is based on information on lending rates collected from nine commercial banks. Since June 2001, banks have been able to set dollar lending rates in line with the international market. Further, on August 1, 2001, the SBV liberalized its policy on the rates at which locally based companies may borrow from overseas lenders.[31]

The SBV responded to the fall in global interest rates by lowering its base rate on dong loans on four occasions, from 0.75 percent to 0.6 percent per month. To increase banks' liquidity of dong holdings, currency swap operations between dollars and dong were reintroduced in August 2001. Reserve requirements on foreign currency holdings were raised from 12 percent to 15 percent in May 2001, but were lowered to 10 percent in November.[32]

The GVN adopted an overall reform framework for state-owned commercial banks ("SOCBs") in March 2001 and developed restructuring plans for individual SOCBs. The main challenges in this area are twofold: implementation of financial restructuring plans through resolution of nonperforming loans and recapitalization, and operational restructuring to strengthen corporate governance and risk management. Resolving the nonperforming loan problem is related to SOE reform in that much of the bad debt is owed by loss-incurring SOEs. With regard to developing the nonbank financial sector, the GVN has broadened the scope of financial leasing and strengthened regulations to improve the business environment for domestic and foreign leasing companies.[33]

Significant progress was made in trade reform in 2001. Among the various measures introduced were lifting quantitative restrictions on all but a few items, abolishing quota allocations for rice exports and fertilizer imports, and further liberalizing trading rights. The BTA was ratified, and active preparations started toward the goal of WTO accession by 2004.[34]

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[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

TABLE 2.13 **Major Economic Indicators, Viet Nam, 1999–2003 (%)**

Item	1999	2000	2001	2002	2003
GDP growth	4.7	6.1	5.8	6.2	6.8
Gross domestic investment/GDP	22.2	23.9	25.9	26.8	28.0
Gross domestic savings/GDP	26.3	25.5	27.4	27.1	27.8
Inflation rate (consumer price index)	0.1	-0.6	0.8	3.0	4.0
Money supply (M2) growth	39.3	39.0	23.2	25.0	26.0
Fiscal balance/GDP[a]	-2.8	-3.0	-4.9	-5.4	-6.5
Merchandise export growth	23.2	25.2	6.5	8.5	12.0
Merchandise import growth	1.1	34.5	6.0	10.0	13.0
Current account balance/GDP	4.1	1.6	1.5	0.3	-0.2
Debt service ratio	12.8	11.2	10.2	8.3	6.8

[a] Excluding grants and including net lending.

Sources: General Statistical Office; Ministry of Finance; State Bank of Viet Nam; staff estimates.

(iii) The World Bank Assessment

Based upon more recent data, the World Bank had a slightly more conservative view of Vietnam's economic performance.[35] According to the World Bank, Vietnam's economy grew by 4.8 percent in real terms in 2001 — slower than in 2000. It is expected to recover to 5.2 percent in 2002. The external environment worsened sharply in 2001, especially after September 11th and continues to pose a downside risk this year. The fall-off in exports in the fourth quarter of 2001 and substantial negative growth in the first three months of 2002 limits the extent of recovery in GDP growth. Only relatively buoyant domestic demand and increasing confidence among domestic and foreign investors will maintain the modest recovery.[36]

In spite of external difficulties, the economic outlook for Vietnam continues to improve overall. The adoption and implementation of a phased program of specific reform measures in early 2001 – in trade policy, private sector development, banking, SOEs and public expenditure management – and the announcement by the GVN of a master-plan on Public Administration Reform and Legal System Development has improved business sentiment and put Vietnam on a healthier medium-term growth trajectory. The recent Party Plenum provided the strongest political endorsement yet for the development of the private sector. Domestic private investors have already expressed higher confidence in the economy by increasing their investments significantly. A renewal of foreign investor interest is also apparent. The recent rise in ratings of Vietnam by various foreign rating agencies confirms a significantly improved perception abroad.

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[35] *See* World Bank, VIETNAM ECONOMIC MONITOR, at 4 (Spring 2002), *available at* http://lnweb18.worldbank.org/eap/eap.nsf/Attachments/eapupdate0402/$File/vietnam.pdf

[36] *Id.*

On the negative side, the worst global recession in nearly 40 years has depressed Vietnam's export growth and real GDP growth in 2001 and in the first quarter of 2002. This has reduced the pace of poverty-reduction too. There will be a modest recovery this year, due mainly to buoyant domestic private consumption and investment. But not until 2003 and beyond, will Vietnam's growth rate reap the full benefits of implementing reforms, when world recovery will be in full swing.[37]

Thus, the World Bank concludes:

> Vietnam's determination to continue removing impediments to faster growth and poverty-reduction, while waiting for world recovery to take hold, is appropriate and timely. The challenge is to continue implementing these reforms expeditiously to sustain investor confidence and promote faster growth and in poverty-reduction.[38]

In sum, the World Bank's approval of the scope and pace of reform in Vietnam so far is clear even as it underscores the need to maintain that commitment.

(iv) The IMF Assessment

On June 21, 2002, the IMF issued News Brief No. 02/53 to announce that the Executive Board of the IMF had completed the second review of Vietnam's arrangement under the Poverty Reduction and Growth Facility ("PRGF") and approved in principle a US$53 million disbursement under the PRGF.[39] The IMF Board also determined that Vietnam's Comprehensive Poverty Reduction and Growth Strategy ("CPRGS") provides a sound basis for IMF concession-based financial assistance. Vietnam will be able to draw SDR 41.4 million (US$53 million) from the arrangement.

Vietnam's three-year IMF-supported program was approved on April 6, 2001 and amounts to SDR 290 million (US$370 million), of which SDR 82.8 million (US$106 million) has been disbursed. The PRGF is the IMF's concessional facility for low-income countries.[40]

After the IMF Board's discussion on Vietnam, Mr. Shigemitsu Sugisaki, Deputy Managing Director and Acting Chairman, made the following statement:

> The Vietnamese authorities have continued to make progress in implementing their three-year program, which seeks to improve competitiveness and spur investment in order to foster high growth and

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[37] *Id.* at *3.*

[38] *Id.* at 3.

[39] *See* IMF, *IMF Completes Second Review of Vietnam PRGF Program and Approves in Principle US$53 Million Disbursement,* News Brief No. 02/53, June 21, 2002, *available at* http://www.imf.org/external/np/sec/nb/2002/nb0253.htm.

[40] *Id.*

rapid poverty reduction. Economic performance under the first-year program was relatively strong and based on generally sound macroeconomic policies and progress in structural reforms. However, delays continued to be experienced in reforming state-owned enterprises (SOEs).

The second-year program is therefore appropriately centered on a firmer implementation of the structural reform agenda, along with continued discipline in macroeconomic management. To promote growth and investment, the authorities will need to press ahead with steps to further open the economy to the private sector and to reform the trade regime and the state-owned commercial banks (SOCBs) and SOEs.

The budget deficit will be capped at a financeable level, but adhering to this limit and ensuring medium-term sustainability will require strengthened revenue performance and spending discipline. Credit growth will continue to be restrained, to keep inflation low and to protect banks' asset quality. External debt management will remain prudent and will continue to rely primarily on concessional financing.

The authorities are expected to press ahead with restructuring the four large SOCBs, bringing loan classification and provisioning in line with international best practices. Under the bank restructuring program, strategic equity participation by a foreign investor in one of the SOCBs is envisaged to take place by end-2003.

To advance SOE reform, more forceful implementation of the authorities' three-year reform plan will be required. Recent steps taken to accelerate the pace of equitization will need to be fully implemented, and over time, the reform plan should be extended to cover the larger, heavily indebted SOEs.

The authorities' Comprehensive Poverty Reduction and Growth Strategy has been prepared in a commendable participatory process. Its successful implementation will require careful prioritization and costing, strong expenditure management and monitoring, and a full assessment of the social impact of reform.[41]

The IMF thus also voiced its approval of Vietnam's economic reform efforts.

(v) Conclusion

The general picture that emerges from the assessments of the ADB, the World Bank and the IMF is that Vietnam is a poor and developing economy struggling with external difficulties yet nevertheless managing to achieve solid

[41] *Id.*

growth under the impetus of an internationally well-regarded structural reform program. These impressive results are backed up by a clear commitment on the part of the GVN to accelerate structural reform, reform that is extremely well documented in treaties and international agreements that Vietnam has made and commitments that it has undertaken. Both in written commitments and actual accomplishments, Vietnam has the indicia of a market economy.

2. Vietnam's Commitment to Structural Reform

Starting with the signing and subsequent ratification of the BTA and further implemented as part of its IMF commitments, Vietnam's determination to accelerate structural reform of the Vietnamese economy has been clear and unambiguous.

(i) IMF Commitments

On June 3, 2002, SBV Governor Le Duc Thuy sent to IMF Managing Director Horst Kohler a Letter of Intent of the GVN enclosing a Memorandum of Economic and Financial Policies (the "MEFP") setting out the objectives and policies that the GVN intends to pursue during 2002.[42]

According to the Letter of Intent,

> The government believes that the policies and measures set forth in the MEFP are adequate to achieve the objectives of the program supported by the PRGF arrangement, but will take further measures if deemed necessary. During the remaining period of the arrangement, Vietnam will continue to consult with the Managing Director on the adoption of measures that may be appropriate, at the initiative of the government or whenever the Managing Director requests such a consultation. The government will continue to provide the IMF with such information as it requires to assess Vietnam's progress in implementing the economic and financial policies under the program.[43]

In other words, the IMF and, through the IMF the international community, is an active participant in the structural reform process in Vietnam.

(ii) Structural Policy Commitments under the MEFP

The MEFP spells out clear obligations with respect to structural policies. In the GVN's own words, they are as follows:

> 17. Our structural reform agenda is centered on strengthening competitiveness across all sectors, opening up the economy, and attracting

[42] *See Vietnam and the IMF*, updated July 22, 2002, *available at* http://www.imf.org/external/np/loi/2002/vnm/01/index/htm.

[43] *Id.*

investment, both domestic and foreign. The CPRGS and its policy matrix spell out the envisaged reforms over the rest of the PRGF arrangement period.

18. We are resolved to advance our **trade agenda**, giving top priority to successful implementation of the bilateral trade agreement with the United States (USBTA) and active preparations for earliest possible accession to the WTO. In line with this policy, we have adopted a timetable to establish the proper legal framework to implement the USBTA. Preparations for bilateral negotiations for WTO accession have also begun. With respect to trade in goods, QRs on three out of five remaining items will be removed by end-December 2002 (cement, motorcycles, and passenger vehicles up to nine seats). We also intend to effect tariff reductions already announced under the AFTA roadmap. In addition, timely implementation of commitments under the USBTA regarding services and intellectual property rights will be important, since many of these meet WTO norms and can be applied on a multilateral basis. To facilitate this process, we will assess the potential impact of global integration on the most vulnerable sectors, drawing on donor technical assistance.

19. We recognize the **private sector** as an important component of Vietnam's economy, and are taking steps to further boost domestic and foreign investment. The business climate will be made more open, fair, and predictable. In particular, and in advance of the timeframes under the USBTA, we are preparing regulations to further open to foreign investors areas in the services (including most retail sales and distribution), agribusiness, and fishery sectors. The dual pricing system for FIEs will be phased out by 2003 for almost all charges and fees, except those for power, which will be removed by 2004. Performance requirements for FIEs will also be phased out. In addition, tax incentives for FIEs will be streamlined and rationalized relative to domestic enterprises.

20. **Banking reform** remains central to our strategy. Our reform approach has been designed to minimize fiscal costs, avoid moral hazard, and maintain systemic stability. Strong efforts will be made to stem the flow of bad loans, phase out policy lending from commercial banks, and put commercial bank operations on a commercial basis. Success here will depend on coordinating SOCB reform with SOE reform.

21. To allow a realistic assessment of NPLs, guidelines were issued in April 2002, which apply Decision 1627 to all loans, except policy loans. We will issue a supplementary guideline to apply this decision to policy loans by July 1, 2002, and will resolve these loans within SOCBs. The new classification standards under this decision will be phased in starting in July 2002 and be completed by year-end. To facilitate this, banks will provide monthly information under the guidelines to the SBV starting in June. Loan provisioning will be brought fully onto the new standards in

stages, starting in December 2002, and will be completed by 2003 subject to the availability of funding resources.

22. The four large SOCBs are implementing individual restructuring plans, striving to meet milestones agreed with the SBV in order to qualify for phased recapitalization. In particular:

- SOCBs have established credit risk management and internal audit committees. Technical assistance is being sought from the Bank and Fund to improve the structure and operations of these functions, including the independence of the audit committees. We intend to ensure that credit is extended on the basis of objective credit analysis and commercial criteria.

- By March 2002, banks resolved NPLs of D1.6 trillion, against the minimum of D1.4 trillion targeted under the milestones.

23. Further progress will be made in bank restructuring in line with the agreed quarterly milestones. Specifically:

- By end-July, subject to donor financing the SOCBs will sign contracts for IAS audits by international auditing firms for the year 2001, and by end-year, we intend to remove agreed qualifications from audits of their 2000 accounts. The SOCBs will make changes necessary to prevent similar qualifications for the audits of the 2001 accounts. We intend to continue IAS audits until accounting standards are brought up to IAS, with donor financial assistance.

- We have set NPL resolution targets for end-September 2002. We intend to set, by December, NPL resolution targets for end-March 2003 based on the new classification standards.

- We will closely monitor progress in strengthening credit risk management in banks.

- In addition, we remain committed to seek for one of the SOCBs strategic equity participation with a reputable foreign partner by end 2003.

24. With respect to the JSBs [joint stock banks], following the closure/merger of 11 banks so far (remaining total of 38), further progress will be made to consolidate the system and strengthen the financial conditions of these banks, toward the aim of reducing by about 50 percent their number.

25. **SOE reform** will be reinvigorated, in order to make up for slippages so far. To this end, we will rephase our original three-year roadmap and

will soon announce an SOE reform program covering 2002–04. In consultation with Bank staff, our agenda of actions is as follows:

- We have put in place in April 2002 Decree 41 which specified guidelines on safety nets for all SOEs, and in June 2002 will adopt a decree on debt settlement for those SOEs being equitized and consistent with budget resources earmarked for such reforms.

- A new equitization decree will also be issued in June 2002, which provides for, among others, the removal of caps on first-time shareholdings in equitized enterprises.

- We will equip as of June the special monitoring and coordinating unit in the National Steering Committee for Enterprise Reform and Development with enforcement powers to oversee implementation of the SOE reform plan.

- We are redoubling efforts to complete our equitization sale, and liquidation of 400 SOEs as targeted under the PRSC through end-June 2002. In line with the original SOE reform framework, the roadmap will lay out an additional 1,400 SOEs subject to ownership transformation over the next two years. We will also set a target through June 2003 on equitization, sale, and liquidation in consultation with Bank staff in the context of the follow-up PRSC.

26. Further progress will be made to strengthen the financial discipline on SOEs through the quarterly monitoring system for a targeted group of 200 large SOEs on their outstanding debt to banks and to the government and other budget support. The MoF will work more closely with provincial financial offices to enforce reporting requirements, including sanctions, so as to reduce delays. In addition, we will make fuller use of such data and will take appropriate measures to contain risks posed by excessive leveraging among these enterprises.[44]

As stated in Paragraph 18 of the MEFP, implementation of the BTA is a top priority in Vietnam's trade agenda. As will be seen below, the BTA itself commits Vietnam to wide ranging reform including unprecedented market access measures not only for US companies but for all major foreign investors as well.

(iii) Scope of the BTA

Signed on July 13, 2000, the BTA took effect on December 10, 2001. The BTA is one of the most detailed bilateral trade agreements ever signed by either the United States or Vietnam. The BTA is comprehensive in coverage, including trade in goods, trade in

[44] *Id.*

services, intellectual property protection, investment rights, business facilitation, transparency provisions, the right to appeal administrative decisions, among other issues.

Speaking from the Rose Garden on July 13, 2000, President Clinton announced the signing of the BTA and confirmed the scope and significance of the agreement:

> With this agreement, Vietnam has agreed to speed its opening to the world; to subject important decisions to the rule of law and the international trading system; to increase the flow of information to its people; by inviting competition in, to accelerate the rise of a free market economy and the private sector within Vietnam, itself. We hope expanded trade will go hand in hand with strength and respect for human rights and labor standards.[45]

In her testimony before the House Subcommittee on Asian and Pacific Affairs and the House Subcommittee on International Economic Policy and Trade in September 2000, USTR Charlene Barshefsky added:

> [T]he BTA marks a major shift of economic policy direction for Vietnam, setting a course for greater openness to the outside world; promoting economic reform and market principles, transparency in law and regulatory policy, and helping Vietnam to both integrate itself into the Pacific regional economy and build a foundation for future entry into the World Trade Organization.[46]

The change in administration in Washington has not affected the US Government's view of the BTA. As US Ambassador to Vietnam Raymond Burghardt stated recently:

> [T]he BTA is an important element of the normalization effort between the US and Vietnam. Five years from negotiation to ratification and entry into force, it is one of most comprehensive agreements that we have undertaken on a bilateral basis. . . . The measures that Vietnam will apply to implement the BTA represent some of the most important steps that it has taken to advance economic reform since it began its program of economic "restructuring" in the late 1980s. The Agreement is significant for several reasons.
>
> First, because the Agreement commits Vietnam to badly needed reform efforts and provides access to the Vietnamese market for US firms at the same time it provides access to the US market for the Vietnamese. It will

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[45] *See* Remarks by President Bill Clinton at the White House, July 13, 2000, *available at* http://www.usvtc.org/mis/usvtc_bta_presidential_remarks.htm.

[46] *See* Testimony of Former USTR Charlene Barshefsky to the House Subcommittee on Asian and Pacific Affairs and House Subcommittee on International Economic Policy and Trade, September 19, 2000, *available at* http: //www.house.gov/international_relations/ap/Vietnam/vietbars.htm, (hereinafter "Barshefsky Testimony").

> also lay the groundwork for the additional economic reforms that Vietnam will need to take to join the World Trade Organization.
>
> Second, the Agreement will help transform Vietnam's economy into one that is more open and transparent. In the long term, the BTA will help improve the business climate for both domestic and foreign companies.
>
> Finally, of course, the Agreement creates new and significant commercial opportunities for US firms and Vietnamese firms in both markets.[47]

The BTA is not only comprehensive from a substantive standpoint. It also embodies commitments to other countries. In response to expressions of concern from the EU, the GVN agreed in Official Letter 250/VPCP-QHQT that Vietnam will not discriminate against EU companies and will treat EU companies no less favorably than US companies.[48] The BTA thus commits Vietnam to opening its markets for all of its major trading partners.

(iv) Summary of the Commitments Made by Vietnam in the BTA

Ambassador Barshefsky summarized well the commitments made by Vietnam in the BTA in her congressional testimony in September of 2000.[49] The agreement is divided into six chapters: (1) market access for industrial goods and farm products; (2) intellectual property; (3) trade in services; (4) investment; (5) business facilitation; and (6) transparency. In each case, it sets clear and specific commitments and timetables. The list of Vietnam's commitments under the BTA set forth below is based on Ambassador Barshefsky's testimony.[50]

Chapter 1. Market Access for Goods

In goods, Vietnam has committed to general trade principles consistent with WTO practices, including reducing tariffs and abolishing non-tariff restrictions such as quotas, ensuring trading rights for foreign and Vietnamese businesses, and others. Some of the major commitments include:

- **Trading Rights:** Vietnam will grant rights for both Vietnamese and foreign businesses to import and export, generally phased in over 3-6 years.

- **National Treatment**: Vietnam will apply national treatment for imports in areas including standards, taxes and commercial dispute settlement.

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[47] *See* Remarks of US Ambassador Raymond Burghardt to the Vietnam Chamber of Commerce and Industry, September 6, 2002, *available at* http://usembassy.state.gov/vietnam/wwwhamb020906.html.

[48] *See* Official Letter 250/VPCP-QHQT (Office of the Government, January 15, 2002).

[49] *See Barshefsky Testimony.*

[50] *Id.*

- **Tariffs:** Vietnam will guarantee MFN-level tariffs for US goods, and cut tariffs on a wide range of agricultural and manufactured goods of interest to American exporters from most cases by a third to a half, from current levels averaging approximately 20 percent.

- **Non-tariff Measures:** Vietnam has agreed to eliminate all quantitative restrictions on a range of industrial and agricultural products (e.g., auto parts, citrus, beef), over a period of 3-7 years, depending on the product.

- **Import Licensing:** Vietnam will eliminate all discretionary import licensing, in accordance with the WTO agreement.

- **Customs Valuation and Customs Fees:** Vietnam will comply with WTO rules — using transactions value for customs valuation, and limiting customs fees to cost of services rendered — in 2 years.

- **Technical Standards and Sanitary and Phytosanitary Measures:** In accordance with WTO standards, technical regulations and sanitary and phytosanitary measures will be applied on a national treatment basis, to the extent necessary to fulfill legitimate objectives (e.g., to protect human, animal or plant life or health).

- **State Trading:** State trading will be carried out in accordance with WTO rules (e.g., state trading enterprises make any sales and purchases only in accordance with commercial considerations).[51]

Chapter 2. Intellectual Property Rights

Vietnam will implement WTO-level patent and trademark protection within one year, and copyright and trade secret protection within 18 months. It will also take further measures to strengthen intellectual property protection in other areas, for example protection of encrypted satellite signals.[52]

Chapter 3. Trade in Services

Vietnam will accept the rules of the WTO's General Agreement on Trade in Services, guarantees protection for the existing rights of all foreign service providers in Vietnam, and made specific commitments in a range of sectors. Some of the major areas include:

- **Telecommunications:** Vietnam will accept the principles of the WTO's Basic Telecommunications Reference Paper, requiring a pro-competitive regulatory regime and cost-based interconnection fees. It will also make commitments to liberalize the basic and value-added telecommunications markets, as follows:

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[51] *Id.*

[52] *Id.*

- **Basic Telecom (including mobile cellular and satellite)**: Vietnam will allow US firms to form joint ventures four years after implementation of the agreement, with a 49 percent US equity limit.

- **Value-added Telecom:** US firms will be allowed to form joint ventures two years after implementation of the agreement (3 years for Internet services), with a 50 percent limit on US equity.

- **Voice Telephone services**: US firms will be allowed to form joint ventures after six years, with a 49 percent equity limit.

In all these fields, Vietnam and the US will discuss a potential increase in the level of US equity participation when the agreement is reviewed in three years.

- **Financial Services**: Vietnam agreed to the General Agreement on Trade in Services financial annex, and made the following specific commitments:

    - **Insurance:** In life and other "non-mandatory" sectors, US firms will be able to form joint ventures with a 50 percent equity limit after three years, and to hold 100 percent equity after five years. In "mandatory" sectors such as motor vehicle and construction insurance, US firms will be able to hold 100 percent equity after six years.

    - **Banking and related financial services**: Vietnam has also agreed to:

    - **Non-bank and leasing company providers:** Joint ventures will be allowed on implementation of the agreement; after three years, Vietnam will permit 100 percent US equity shares.

    - **Banks:** US banks will be allowed to open branches in Vietnam. US banks will be able to form joint ventures with equity between 30 percent and 49 percent; after 9 years, 100 percent US subsidiary banks will be allowed. Vietnam will also allow US banks to hold equity shares in privatized Vietnamese banks at the same level as allowed Vietnamese investors. Over time, Vietnam will also allow US banks to offer such services as deposits in local currency, credit cards, ATM machines and others.

    - **Securities-related services:** US securities firms will be allowed to open representative offices in Vietnam.

- **Professional:** Vietnam has made specific commitments across the range of professional services industries. These include:
  - **Legal**: Vietnam will allow 100 percent US equity in legal firms, including branches. Law firms opening branches in Vietnam will receive 5-year, renewable licenses, and may consult on Vietnamese laws.
  - **Accounting**: US accounting firms will be able to hold 100 percent equity. Vietnam will grant licenses to US accounting firms on a case-by-case basis for three years, with no limits afterwards. US firms will be able to provide services to foreign invested firms for the first two years, and to Vietnamese firms afterwards.
  - **Architectural**: US architectural firms will be able to hold 100 percent equity. US firms will be able to provide services to foreign invested firms for the first two years, and to Vietnamese firms afterwards.
  - **Engineering**: US engineering firms will be able to hold 100 percent equity. US firms will be able to provide services to foreign invested firms for the first two years, and to Vietnamese firms afterwards.
  - **Audio Visual**: US firms will be able to form joint ventures with 49 percent equity on implementation of the agreement; the equity limit will rise to 51 percent after five years. Services opened under this commitment include film production and distribution, and motion picture projection services.
  - **Distribution:** For wholesale distribution, US firms will be able to form joint ventures after three years with a 49 percent equity limit; this equity limit will be eliminated after six years. All US retailers wishing to participate in the Vietnam market will be allowed to open one outlet, with further approvals on a case-by-case basis.
- **Other:** Vietnam has also made specific commitments in a wide range of other services fields, including computer services, advertising, market research, management consulting, construction, distribution, private education, health services such as hospital and clinics, and the travel and tourism sector.[53]

Chapter 4. Investment

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[53] *Id.*

Vietnam will make a series of commitments that will ease investment, reduce paperwork and ensure national treatment for foreign investors. These include protection against expropriation of US investments in Vietnam, and rights to repatriate profits and conduct other financial transfers on a national treatment basis; phasing out such measures as local content requirements and export performance requirements within 5 years; ending almost all investment screening and discriminatory pricing; and reducing government controls and screening requirements for joint ventures.[54]

Chapter 5: Business Facilitation

Vietnam will guarantee the right for US persons to conduct routine business practices, such as setting up offices, advertise, and conduct market studies.[55]

Chapter 6: Transparency and Right to Appeal

Under the provisions of this chapter, Vietnam will make an extensive set of commitments to transparency. In a major reform of administrative policies, Vietnam will now provide advance notice of all laws, regulations and other administrative procedures relating to any matter covered in the agreement; publish all laws and regulations; and inform the public of effective dates and government contact points. Specific commitments include:

- All laws governing issues covered in the agreement must be made public and readily available;
- Vietnam will designate an official journal in which all such measures will be published;
- Vietnam will commit to uniform, impartial and reasonable application of all laws, regulations and administrative procedures;
- Vietnam will form administrative or judicial tribunals for review and correction (at the request of an affected person) of all matters covered in the agreement, and afford the right to appeal the relevant decision.
- Notice of decisions upon appeal and reasons for decisions appealed will be provided in writing.[56]

(v) Implementation of the BTA

The Prime Minister of Vietnam recently issued Decision 35-2002-QD-TTg outlining Vietnam's comprehensive plan for implementing the BTA in all aspects. Vietnam conducted a preliminary review of its laws and found 148 legal documents at the

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[54] *Id.*

[55] *Id.*

[56] *Id.*

central level to have inconsistencies with the provisions of the BTA.[57] At the present time, Vietnam is working on amendments for 24 documents, overall changes of 39 documents, and the abolishment of 9 documents.

In the upcoming National Assembly meetings in October 2002, Vietnamese officials will bring more legislation into line with BTA requirements. The legislation includes, among others, Amendments to Commercial Law; Amendments to the Law on Business Bankruptcy; Law on Social Insurance; Law on Accounting; and Ordinance on Arbitration.

(vi) Conclusion

The foregoing review of the commitments that Vietnam has undertaken towards the multilateral institutions and the international community -- as well as the US and the EU -- leaves little doubt about the scope and pace of the structural reform program to which Vietnam has committed. The favorable response of the international community overall is a strong indication that reform of the right kind is being carried out at the right pace. VASEP believes that these conclusions must be part of the totality of facts that the Department takes into account in its review of Vietnam's economy. Most importantly, VASEP submits that the scope of the BTA alone is sufficient to warrant a finding that economic reforms have reached a threshold level such that the country should be considered to have a functioning market economy in which prices and costs exist that can be used under the US antidumping law. Annex A is a set of charts included in the Spring 2002 World Bank Economic Monitor that provides a good overview of the structural reform process over the last several years. Finally, VASEP submits that the examination of the five specific statutory factors will strongly support the conclusion that Vietnam should be given market-economy treatment.

[57] These documents include the following: 26 laws, 19 ordinances, 1 Presidential Decision, 54 decrees, 8 Prime Ministerial Decisions, 2 Prime Ministerial Instructions, 23 Ministry Circulars, 13 Ministry Decisions and 1 Ministry Instruction. *See Catalog of Legal Updates*, prepared by US-Vietnam Trade Council Education Forum at 13-14 (September 15, 2002), *available at* http://www.usvtc.org/documents/catalogoflegalupdates/description.htm.

IV. Vietnam – Kazakhstan: Currency Convertibility Parallels

Summary of Comment

The Vietnamese currency, the "dong" or VND, is a convertible currency under the analysis applied to the Kazakhstan currency by the Department in the Kazakhstan Decision. The parallels between Vietnam and Kazakhstan are unmistakable, and support a finding that Vietnam is a market economy.

1. The Convertibility Analysis in the Kazakhstan Decision

In the Kazakhstan Decision, the Department determined that "Kazakhstan's currency regime is essentially liberalized, as evidenced by a fully convertible currency (the tenge) for current account purposes, as well as a market-based exchange rate regime."[58] Specifically, the Department noted that:

> At the beginning of 1999, the NBK [National Bank of Kazakhstan] abolished its "peg to the ruble and shifted to a floating exchange rate regime. Today the NBK establishes official exchange rates on the basis of rates in the FOREX market, and interbank markets, and exchange rates remain market based in accordance with supply and demand.[59]

In other words, the Department determined that current account convertibility — including Kazakhstan's adoption of Article VIII of the IMF Articles of Agreement — combined with a floating exchange rate system was enough to constitute fulfillment of the currency convertibility requirement under Section 771(18) of the Act.

The Department determined that Kazakhstan met the threshold requirement for currency convertibility despite the fact that Kazakhstan "still has controls on some capital account transactions." The Department ultimately set aside concerns regarding capital account controls in stating that such controls "are common in many countries."[60] The Department concluded, therefore, that Kazakhstan could meet the statutory requirement for currency convertibility based solely on the current account convertibility of the tenge and evidence that Kazakhstan had successfully implemented "a market-based exchange rate regime."[61] As detailed below, Vietnam meets the currency convertibility standard applied in the Department's Kazakhstan Decision.

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[58] *See* Kazakhstan Decision at 6.

[59] *Id.* at 7.

[60] *Id.*

[61] *Id.*

2. Vietnam's IMF Commitments on Foreign Exchange Rates

The basic arrangement between Vietnam and the IMF is the Three-Year Arrangement under Poverty Reduction and Growth Facility (the "PRGF") approved by the Executive Board of the IMF on April 13, 2001. The first review of Vietnam's compliance was completed in November 2001.[62] Discussions for the second review of the arrangement under the PRGF were held in Hanoi in March and May 2002 leading to the approval of the Staff Report included in the Second Review on June 7, 2002. According to the Second Review, Vietnam will be able to accept Article VIII, and has committed to do so, by the end of the program period of the arrangement under the PRGF in early 2004.[63]

On exchange rate restrictions, the IMF noted that on February 25, 1999, the SBV revised the operation of the interbank foreign exchange market. Under this *de facto* managed floating regime, the SBV allows interbank foreign exchange market rates to depreciate by a maximum of 0.1 percent a day from the previous day's average interbank exchange rate.[64] On July 1, 2002, the band was widened to 0.25 percent.[65] In the MEFP, the GVN made clear commitments in respect of foreign exchange rate management:

> 15. The SBV will manage the **exchange rate** more flexibly, giving a greater role to market forces and minimizing administrative measures. In particular, the band for the maximum movement of the daily interbank exchange rate will be widened. The SBV will intervene in the interbank market only to stem disorderly conditions, and will gear its foreign exchange sales toward meeting the quarterly reserve targets agreed under the program.[66]

This is echoed by the Staff Report included in the Second Review, which provides:

> Intervention in the foreign exchange market will be limited to addressing disorderly conditions and will be consistent with achieving the program's NIR [Net International Reserves] target.[67]

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[62] *See* IMF, *Vietnam: Second Review Under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility and Request for Waiver of Performance Criteria-Staff Report; Staff Statement; News Brief on the Executive Board Discussion; Statement by the Executive Director for Vietnam*, International Monetary Fund Country Report No. 02/151 (July 2002), (collectively hereinafter, the "Second Review") in Staff Report, available at http://www.imf.org/external/pubs/cat/longres.ctm?sk-15961.0.

[63] Second Review, Attachment II at 63.

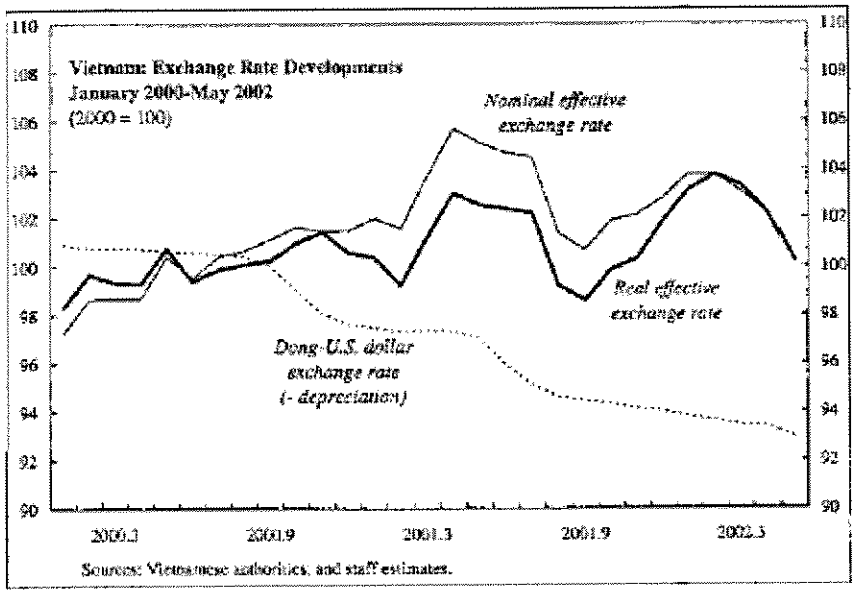
[64] Second Review, Annex I at 41.

[65] Decision No.679/2002/QD-NHNN, dated July 1, 2002 of the Governor of the SBV.

[66] Second Review, Attachment II at 63.

[67] Second Review, Staff Report at 16.

Thus, at the same time that the NBK was shifting to a floating exchange rate regime, the SBV created a managed floating rate regime based upon the interbank foreign exchange rate. In the words of the Kazakhstan Decision, the SBV "establishes official exchange rates on the basis of rates in the FOREX market, and interbank markets, and exchange rates remain market based in accordance with supply and demand."[68]



Indeed, there is evidence of growing flexibility in the management of exchange rates, as noted by the ADB.[69] During the early months of 2001, currencies of other countries in the region depreciated against the US dollar even faster than did the dong. In real terms the dong appreciated against them. In view of this, attempting to accelerate export growth, the GVN allowed the dong to depreciate more rapidly in the second half of the year. Just before the events of September 11th, the dong was trading at 15,150 to the US dollar. It then appreciated slightly, and remained at the 15,130 level until the end of 2001. This represented a depreciation of about 4 percent during the year.[70]

The SBV's actions are very similar in nature and approach to those taken recently by the NBK and favorably noted by the Department. The Department said in the Kazakhstan Decision:

> Since adopting a market driven exchange rate, the NBK's only significant influence on the value of the currency has been to control inflation by limiting nominal appreciation of the tenge and controlling foreign exchange rate fluctuations. For example, when increases in dollar-

[68] *See* Kazakhstan Decision at 6.

[69] *See* ADB, *Asian Development Outlook 2002: II. Economic Trends and Prospects in Developing Asia: Southeast Asia, available at* http://www.adb.org/Documents/Books/ADO/2002/vie.asp.

[70] *Id.*

denominated oil revenues led to upward pressure on the tenge exchange rate, the NBK's foreign exchange intervention was limited to moderating the rate of change and preventing undue fluctuations in the exchange rate. In addition, after oil price increases in 2000 caused a surge in the currency supply, the NBK reaction was limited to dampening inflationary pressures by issuing short-term NBK notes to absorb the excess liquidity. The result has been that although the tenge has remained relatively stable in nominal terms vis-a-vis the US dollar, it has remained market-based.[71]

The Department should thus apply a similar analysis to Vietnam; it will reach a similar conclusion -- that Vietnam has a market based currency program that is consistent with the operation of market economy.

3. Vietnam's IMF Commitments on Foreign Exchange Control

The MFEP also includes clear GVN commitments on the current account restrictions:

> Furthermore, the surrender requirement was lowered from 40 percent to 30 percent effective May 2002, and will be phased out as and when economic circumstances permit and at the latest by the end of the PRGF arrangement. Also, to limit external vulnerability, the SBV will closely monitor the quality and liquidity of foreign assets held by banks, given the potential volatility of foreign currency deposits. With respect to the exchange system, we intend to submit to the National Assembly at the latest by September 2002 a proposal to remove the tax on profit remittances of foreign-invested enterprises (FIEs). This is later than initially programmed but consistent with our ongoing efforts to harmonize tax treatment between foreign-invested and domestic enterprises. All remaining restrictions on current international transfers and payments will be removed, subject to National Assembly approval, by end 2002 in order to pave the way for acceptance of the obligations under Article VIII, Sections 2, 3, and 4 of the Fund's Articles of Agreement.[72]

Again, the GVN's commitments are noted and confirmed by the IMF Staff Report. It states as follows:

> In addition, the foreign exchange surrender requirement was reduced from 40 to 30 percent in May 2002, and will be phased out by the end of the program period. The tax on profit remittances will be eliminated by end – 2002, later than programmed but consistent with efforts to harmonize tax treatment between foreign and domestic enterprises. Remaining restrictions on current international transfers and payments will also be

[71] *See* Kazakhstan Decision at 6.

[72] Second Review, Annex II, at 63.

removed to enable Vietnam to accept the obligations under Article VIII, sections 2, 3, and 4 within the program period.[73]

In sum, by the end of this year, the dong will achieve the kind of current account convertibility for the tenge favorably recognized by the Department in the Kazakhstan Decision. While formal acceptance of Article VIII will not follow until later in the program, all prerequisites for such acceptance should be met by the end of this year.

It should be noted that the Department does not insist upon the abandonment of capital account restrictions. Indeed, in the case of Vietnam, such restrictions have buffered the country from the impact of the recent Asian Financial Crisis and therefore paved the way for the macroeconomic progress that has been noted by all the multilateral development institutions. A fully open capital account may present risks for economic stability and prosperity as illustrated too well by the recent examples of Thailand, Indonesia and Korea, all far more advanced economies than Vietnam. In the Second Review, the IMF has noted that Vietnam's external vulnerability is moderate, given its relatively closed capital account limited access to capital markets.[74] Thus, the Kazakhstan Decision should be read as accepting some level of capital controls which are consistent with sound macroeconomic principles.

4. Conclusion

The dong, like the tenge, is a convertible currency under the principles of the Kazakhstan Decision. The exchange rate is determined by a market-oriented and market-based managed floating regime with the SBV limiting its intervention to operations designed to address disorderly conditions. In addition, the dong will by the end of the year be fully convertible for current account purposes with acceptance of Article VIII of the IMF's Articles of Agreement to follow by the end of the PRGF arrangement. Prudential capital controls will be maintained to limit external vulnerability in a still volatile regional and global environment just as some

[73] Second Review, Staff Report, at 16. Only Sections 2, 3, and 4, of seven total sections, relate directly to currency convertibility. Section 2 of Article VIII relates to restrictions on current account payments, Section 3 covers obligations related to avoiding discriminatory currency practices, and Section 4 addresses convertibility of foreign-held balances. Accepting obligations under these three sections, therefore, constitutes full compliance with all IMF Article VIII currency convertibility requirements. The remaining four sections do not outline specific obligations like those detailed in Sections 2, 3, and 4. Section 1 merely introduces the terms of Article VIII in general. Section 5 outlines the IMF's general reporting requirements detailing the type of national economic data that the IMF can request from IMF member countries, including data on national income, price indices, international balance of payments (including trade in goods and services), gold transactions, known capital transactions, and foreign currency buying and selling rates. Section 6 authorizes those countries operating under Article VIII obligations that maintain certain restrictions on exchange transactions under pre-existing bilateral agreements "to consult with one another with a view to making such mutually acceptable adjustments as necessary." Finally, Section 7 sets forth a general requirement that a country agreeing to the terms of Article VIII work with the IMF and other member countries to "ensure that the policies of the member with respect to reserve assets shall be consistent with the objectives of promoting better international surveillance of international liquidity and making the special drawing right the principal reserve asset in the international monetary system."

[74] Second Review, Staff Report, 16 note 8.

capital controls are maintained in Kazakhstan. Given the striking parallels between Vietnam and Kazakhstan, the Department must conclude that the dong is a convertible currency for purposes of its review of the first factor in its Section 771(18)(B) review of Vietnam. Hence this first factor supports a finding that Vietnam is a market economy.

V. Wage Rates in Vietnam, Like in Kazakhstan, Are Freely Bargained

Summary of Comment

Vietnam's labor laws, like labor laws in Kazakhstan, are relatively unrestrictive and, like Kazakh workers, Vietnamese workers can bargain freely through collective agreements, enjoy social and economic protections such as a minimum wage, and participate in strikes. Vietnam's economy, like the Kazakhstan economy, benefits from a relatively liberalized labor system functioning largely outside of government control which Vietnam is committed to bring increasingly in line with international labor standards. This factor therefore supports a finding that Vietnam is a market economy.

1. Wage Rate Reform in Kazakhstan

In its Kazakhstan Decision, the Department found that "Kazakhstan does not have laws which prescribe that the Government of Kazakhstan administer wages in the economy, except in SOEs and in the establishment of a minimum wage."[75] The Department also noted the evolution of the Kazakh labor law framework favorably:

> Labor reform since 1991 has included extensive legislative action, including the 1992 Law on Collective Bargaining Agreements, which provides for free bargaining between parties to reach a collective agreement. In 1993, the GOK adopted Article 17 of the Law on Professional Labor Unions, which gives unions the right to develop social and economic protection plans to protect their members. The law permits unions to establish programs to combat unemployment, to determine minimum wages, pensions, stipends and welfare benefits. The GOK subsequently adopted the Law on Labor Disputes and Strikes in 1996, which allows strikers to demand and receive wage increases.
>
> The most significant labor reform legislation implemented in Kazakhstan to date is the 1999 Law on Labor. The law replaces collective agreements previously negotiated by unions with separate employment contracts negotiated between individual employees and employers. However, employees or employers who wish to have collective agreements may still bargain for such agreements. In collective bargaining, both trade unions and other organizations established by non-union members may represent the employees' side. The law stipulates that a collective agreement is valid only for those on whose behalf it was signed. The Law on Labor also

[75] *See* Kazakhstan Decision at 6.

states that wages may not be lower than the minimum monthly wage established by the GOK.[76]

Given this legal framework, the Department concluded:

> Today, workers in Kazakhstan largely negotiate their own wages, and market forces establish wage rates. Moreover, the labor force is mobile and free to pursue new employment opportunities, as evidenced by the rapid expansion of certain sectors (e.g., oil), and the contraction of others (e.g., agriculture). Wage reforms are well advanced in Kazakhstan, with workers able to unionize and negotiate wages and benefits on an individual and collective basis. Since 1999, real wages have been increasing rapidly, while unemployment and wage arrears have declined. Overall, the progress made by Kazakhstan under this factor supports market forces in the country.[77]

Although the Department's Kazakhstan Decision reflected the fact that "the success of wage reforms in Kazakhstan has been attenuated by a longstanding problem with wage arrears," the Department ultimately concluded that Kazakhstan had made sufficient overall progress and that "real wages have been increasing rapidly, while unemployment and wage arrears have declined."[78] Like Kazakhstan, Vietnam has undergone labor law reform. But unlike Kazakhstan, there is no wage arrearage problem in Vietnam.

2. Labor Law Reform in Vietnam

Labor laws in Vietnam, like corresponding laws in Kazakhstan, require that all enterprises allow for the formation of labor unions, and that labor agreements guarantee the right to strike.[79] Vietnam is also comparable to Kazakhstan in respect of the right of workers to form labor unions and to freely negotiate wages. As detailed below, Vietnam's sustained labor-related legislative reforms and implementation of International Labor Organization ("ILO") standards only underscore the country's deep commitment to guaranteeing the rights of workers.

The Economist Intelligence Unit ("EIU") detailed in a 2001 report the GVN's significant achievements in reforming the country's labor laws. The EIU report summarized the current labor legal framework:

> Each enterprise should work out a set of labour bylaws that conform to the Labour Code. Employers must sign labor contracts individually with each worker . . . . An employer and a representative of the employees must also

[76] *Id.* at 6-7.

[77] *Id.* at 7.

[78] *Id.*

[79] *See Country Commerce Vietnam 2001,* The Economist Intelligence Unit at 50 – 51 (April 2001) ("EIU Report").

> enter into a collective labour agreement, which contains provisions relating to matters like terms of employment, working hours, rest breaks, salaries, occupational safety and insurance. The worker's contract, which is signed at the time of employment, should be consistent with this collective agreement and with the Labour Code; otherwise labor inspectors can disqualify the contract to the detriment of the employer. A member of the executive committee of the trade union must sign the collective agreement. It should comply with the Labour Code and all related trade union regulations.[80]

This legal framework was enacted as part of Vietnam's 1994 labor law, which went into effect in 1995.

Reform of the labor legal framework is also continuing. The US-Vietnam Trade Council this September inventoried the GVN's most significant and recent labor law reforms. According to the Council, the National Assembly passed 56 Amendments to the Labor Code on 2 April 2002 (effective 1 January 2003) providing the following relevant changes:

(i) Except for special cases where the maximum amount of overtime per year has been increased to 300 hours, the maximum amount of overtime remains 200 hours per year;

(ii) Foreign companies are allowed to recruit employees directly;

(iii) Definite term labor contracts now automatically become indefinite term labor contracts if no new contract is signed upon expiry of the definite term labor contract;

(iv) Retrenchment allowances remain 1 month's pay for every year of employment (Article 17) but provisions on severance allowances (Article 41) have expanded;

(v) Overtime wages for holidays and paid leave days have been raised from 200 percent to 300 percent;

(vi) Collective labor agreements become effective either from the date agreed by the parties as stated in the collective labor agreement or from the date of signing; and registration at the provincial labor office is still required although a lack of registration alone is no longer a ground for invalidity;

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[80] *Id.*

(vii) Employers are entitled to dismiss employees when they are absent for 5 days a month (previously 7 days) or 20 days a year without proper reasons;

(viii) Social insurance contributions will be mandatory for all employees employed under labor contracts with a term of 3 months or more; (previously, social insurance contributions were only mandatory where an employer employed over 10 employees); and

(ix) The government is to issue "detailed guidelines on re-training of unemployed laborers, rates of unemployment insurance premium, conditions for and amounts of unemployment insurance premium, conditions for and amounts of unemployment allowances, and establishment, management and use of unemployment insurance fund" (Article 140.1).[81]

(x) the employer of private sectors are free to set up wage scales depending on his own business conditions and subject to general rules of the Government.

In addition to the changes enacted during the last session of the National Assembly, a national unemployment insurance scheme will likely be introduced as part of the proposed Law on Social Insurance, expected to be considered by the National Assembly at its next session in October-November 2002.[82]

Vietnam has also committed to further reform its labor policies to bring them into line with international standards. Vietnam rejoined the ILO in 1992 (Kazakhstan joined in 1993). Since 1992, Vietnam has ratified 15 ILO conventions including three of the ILO's eight core human rights conventions:

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[81] *See Catalog of Legal Updates*, prepared by US-Vietnam Trade Council Education Forum at 13-14 (September 15, 2002), *available at* http://www.usvtc.org/documents/catalogoflegalupdates/description.htm.

[82] *Id.*

Table 1. ILO Conventions Ratified by Vietnam

Core ILO Conventions	Date Ratified by Vietnam
No. 100, Equal Remuneration Convention (1951)	7/10/97
No. 111, Discrimination (Employment and Occupation) (1958)	7/10/97
No. 182, Worst Forms of Child Labor Convention (1999)	12/19/00
Other ILO Conventions	**Date Ratified by Vietnam**
No. 5, Minimum Age (Industry) Convention, (1919)	3/10/94
No. 6, Night Work of Young Persons (Industry) (1919)	3/10/94
No. 14, Weekly Rest (Industry) Convention (1921)	3/10/94
No. 27, Marking of Weight (Packages Transported by Vessels) (1929)	3/10/94
No. 45, Underground Work (Women) (1935)	3/10/94
No. 80, Final Articles Revision (1946)	3/10/94
No. 81, Labor Inspection (1947)	3/10/94
No. 116, Final Articles Revision (1961)	3/10/94
No. 120, Hygiene (Commerce and Offices) (1964)	3/10/94
No. 123, Minimum Age (Underground Work) (1965)	2/20/95
No. 124, Medical Examination of Young Persons (Underground Work) (1965)	3/10/94
No. 155, Occupational Safety and Health (1981)	3/10/94

Currently, Vietnam is working on a plan to gradually ratify the remaining core ILO conventions and hopes to ratify both forced labor conventions and the minimum age convention.[83] However, under the Declaration on Fundamental Principles and Rights to Work, all ILO members, including Vietnam and Kazakhstan, have pledged to respect and promote all the core ILO labor standards, including those on association, right to organize and collective bargaining. A number of technical assistance projects in the field of labor sponsored by foreign donors are underway in Vietnam, including work by the ILO and the US Department of Labor pursuant to a bilateral labor cooperation agreement. [84] Thus through domestic and international legal commitments, Vietnam has implemented labor reforms that ensure that wages are based on market conditions.

[83] *See* Manyin, Rum & McHugh, *CRS Report for Congress*: *Vietnam's Labor Rights Regime: An Assessment* at 7 (March 23, 2001) (Foreign Affairs, Defense and Trade Division of the Congressional Research Service) ("CRS Report"), *available at* http://www.usvtc.org/documents/crs_laborrights.pdf.

[84] *See FY 2002 Country Commercial Guide: Vietnam*, prepared by the US Embassy, Hanoi *available at* http://www.usatrade.gov/Website/CCG.nsf/CCGurl/CCG-VIETNAM2002-CH-7:-0067B8CE; *see also* Memorandum of Understanding Between the Department of Labor of the United States of America and the Ministry of Labor, Invalids and Social Affairs of the Socialist Republic of Vietnam, (November 17, 2000) *available at* http://www.usvtc.org/Labor/11.17_mou.htm.

3. Workers' Rights in Vietnam

Vietnamese labor law, like Kazakh labor law, only guarantees sector-specific minimum wages that vary depending on an individual's qualifications but does not otherwise interfere with a worker's ability to negotiate wages with an employer. The EIU provides the following monthly minimum wage levels, in US dollars, for Vietnamese employees working in foreign representative offices, organizations or individuals. These minimum wages were established following the release of a 2000 Ministry of Labor circular.[85]

Monthly Minimum Wage Rates by Position and Grade, in US Dollars

Function/Position	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
Maid	80	100	120	150	180
Room Maid	100	120	150	180	210
Gardener	100	120	150	180	210
Guard	120	140	170	200	240
Cook	150	180	210	250	290
Driver	150	180	210	250	290
Clerk, office staff	180	210	240	270	300
Secretary, accountant	200	230	270	310	350
Interpreter, marketing staff	250	280	310	350	400
Asst. to chief rep., manager	300	340	380	430	480
Chief representative	500	550	600	650	N/A

Vietnamese labor law also permits workers to be "employed in any place not prohibited by law."[86] In sum, Vietnamese workers are allowed to negotiate wages collectively or individually and seek employment anywhere in the country.

In addition, Vietnamese workers can also strike when employers violate the terms of a collective labor agreement. US government researchers recently commented on these developments, noting that over the past decade the Vietnam General Confederation of Labor and its member unions have become more assertive — particularly on matters relating to wages, health and safety.[87] In 2000, 72 labor strikes occurred, compared to a total of 63 in 1999. Strikes took place in SOEs, foreign invested enterprises, and domestic private companies. Most of the strikes involved labor — management disputes over health, safety, or other working conditions, work hours, or late payment of wages, and were settled quickly.[88] According to US government studies, by many measures — the coverage of labor laws, the tolerance of wildcat strikes, the slowly increasing clout of

[85] EIU Report at 52.

[86] *Id.*

[87] *See* CRS Report at Summary.

[88] *See FY 2002 Country Commercial Guide: Vietnam.*

grass roots unions, the relative openness of debate over labor issues — there is evidence that the Vietnamese labor rights regime is flexible and responsive. [89] Vietnamese workers therefore may negotiate with employers and strike — these are indicia of a functioning labor market.

4. Conclusion

Vietnam's labor laws, like labor laws in Kazakhstan, are relatively unrestrictive and represent significant progress in protecting the rights of workers and ensuring that wages are freely negotiated. Like Kazakh workers, Vietnamese workers can bargain freely through collective agreements, enjoy social and economic protections such as a minimum wage, and participate in strikes. Vietnam's economy, like the Kazakhstan economy, benefits from a relatively liberalized labor system which functions largely outside of government control. Vietnam has also committed to continuing open labor processes through its international commitments, like Kazakhstan. The Department therefore should find that this factor supports a finding that Vietnam is a market economy.

[89] *See* CRS Report at Summary.

VI. With the BTA, Vietnam Is An Increasingly Attractive FDI Destination

Summary of Comment

Vietnam compares favorably to Kazakhstan in terms of the country's openness to outside foreign investment. Both countries have made their markets accessible to FDI, and Vietnam made especially strong market access commitments in the BTA far exceeding those of Kazakhstan. While the Asian Financial Crisis has had a negative impact on FDI, there are distinct signs of renewed interest as a result of the ratification of the BTA and post-September 11 security concerns. Vietnam's commitment to foreign investment and its proven ability to attract such investment further evidence that a market economy operates in Vietnam.

1. FDI in Kazakhstan

In its Kazakhstan Decision, the Department concluded "in many ways, Kazakhstan is an investor-friendly country with a generally consistent policy to improve the domestic investment climate."[90] The Department also noted that FDI in Kazakhstan "is welcome in virtually all economic sectors, except in areas designated as natural monopolies (e.g., utilities)."[91] The Department, specifically, noted the following:

> In 1994, the GOK implemented the Law on Foreign Investment, which provides guarantees for stability in the legal regime, non-expropriation, freedom to utilize profits made in Kazakhstan, and currency convertibility. The law also provides for access to international arbitration and protection against unlawful acts of government agencies and officials. Foreign and private domestic entities have the same right to establish and own business enterprises in Kazakhstan, and to engage in all forms of remunerative activity. Private individuals can freely buy and sell interest in business enterprises. Further, foreign enterprises are free to repatriate investment profits.
>
> In addition to providing legal guarantees for foreign investors, the GOK has taken steps to provide certainty with respect to tax treatment, and to encourage direct investment. The 1995 Tax Code introduced a value added tax, income taxation of both individuals and enterprises, and a variety of excise taxes, which are clearly spelled out. In 1997, the GOK implemented the Law on State Support for Direct Investment, which

[90] *See* Kazakhstan Decision at 9.

[91] *Id.*

> provides incentives in certain priority sectors, including production infrastructure, processing industries, enterprises located in the capital city of Astana, housing and enterprises related to the social sector, and agriculture. Joint ventures and other forms of investment are permitted in Kazakhstan, and the GOK has been successful in promoting substantial FDI, in particular into the oil, gas, and metals sectors. While foreign investors generally perceive that sub-national governments in Kazakhstan favor domestic ownership, FDI levels are strong, and foreign industry's participation in Kazakhstan's economy is an important dynamic supporting market forces in the country. Overall, we believe that Kazakhstan has made significant progress under this factor.[92]

The Department's Kazakhstan Decision, in general, describes a high level of joint venture interest in the oil, gas, mining, and energy sectors while acknowledging some local-level resistance to outside foreign investment. Overall, the Department viewed Kazakhstan's foreign investment environment as one of the strongest justifications for graduating the country to market-economy status.

2. Legal Reforms in Vietnam Support Increased FDI

The attraction of FDI has been a priority for Vietnam since the Law on Foreign Investment was enacted in 1986. While Vietnamese legislative enactments have mainly been similar to those of Kazakhstan, they have, in crucial respects, far exceeded those of Kazakhstan in scope and depth.

The GVN for the last four years has worked aggressively to improve the country's foreign investment climate through various legislative enactments. In 1998, for example, the GVN issued a foreign investment decree in order to provide additional incentives to foreign investors.[93] In 2000, the Enterprise Law took effect and the GVN revised the Foreign Investment Law to ease business registration requirements, improve access to foreign exchange, allow for automatic registration of foreign-invested export firms, and establish a system through which the GVN can issue guarantees for large infrastructure projects.[94] The EIU states that the 2000 amendments to Vietnam's Foreign Investment Law "allowed foreign-invested enterprises to set up offshore bank accounts, eased foreign-currency rules, protected incentives and tax breaks from arbitrary changes, and reduced the ability of local partners to frustrate a joint venture's activities."[95] These steps all evidence Vietnam's desire to improve the FDI environment.

There is nevertheless no better evidence of Vietnam's commitment to attracting more FDI than the BTA itself. In addition to the provisions summarized and discussed in

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[92] *Id.*at 8-9.

[93] *See* Country Commerce Vietnam 2001, Economist Intelligence Unit (April 2001).

[94] *Id.* at 13.

[95] *Id.*

Section III.2 above, there is an exchange of letters dated July 13, 2000 between Vietnam's current Deputy Prime Minister and then Minister of Trade, Vu Khoan, and USTR Charlene Barshefsky (the "Vu Khoan — Barshefsky Exchange"), identifying specific and strong commitment in the FDI area.[96] The Vu Khoan — Barshefsky Exchange, by its own terms, forms part of the BTA.

(i) The Evaluation Regime

The Vu Khoan — Barshefsky Exchange distinguishes between two investment regimes: an evaluation regime where Vietnam maintains discretion over the granting of the investment license and a registration regime where no such discretion exists. Vietnam can maintain an evaluation regime for investment licensing in the following sectors:

(a) Broadcasting and television; production, publishing and distribution of cultural products; construction and operation of sea port, river port, airport, cultural complex and tourist resorts; cargo and passenger transportation by road, air, rail, sea, inland-waterway; fishing and fish catching; banking; insurance; construction, installation and maintenance of telecommunication facility; brokerage, dealership in securities and currency values, and other related services; real estates business; infrastructure development projects for industrial parks, export processing zones and high tech zones;

(b) Projects in power, mineral exploitation and processing, metallurgy, cement, chemicals, agriculture sector with investment capital of over USD $40 million. Vietnam shall consider raising this threshold amount as these sectors develop; and

(c) Projects using rice-growing land, urban land of 5 ha upward or other kinds of land of 50 ha upward.[97]

The Vu Khoan — Barshefsky Exchange also provides for licensing principles procedures in the case of investments subject to the evaluation regime:

(a) US nationals and companies shall be accorded most-favored nation treatment in respect of any requirements for, and in the administration of, licenses;

(b) The criteria for the granting or denial of a license, and for the imposition of any conditions for such license, shall be published, readily understandable, and no more burdensome than necessary to serve a legitimate regulatory interest;

[96] Letter of Minister of Trade Vu Khoan to USTR Charlene Barshefsky, dated July 13, 2000, *available at* http://www.usvtc.org/misc/usvtc_khoan_letter.htm.

[97] Vu Khoan — Barshefsky Exchange, Para.1

(c) The decision to grant or deny a license shall be made in conformity with all of the provisions of the BTA, including those relating to the maintenance and elimination of TRIMs and certain other provisions;

(d) A decision denying an investment license to nationals or companies of the United States shall be in writing and set forth the reason for the denial. A US national or company of the United States, if denied a license, shall have the right to seek reconsideration of such decision with the investment licensing agencies of Vietnam which shall issue a decision within 30 days;

(e) Except for investments subject to the evaluation regime described under sub-paragraph (a) above, a license shall not be denied or subjected to conditions for the purpose of (a) compelling a US national or company to select a particular local partner or to locate production or other facilities in a particular location; or (b) discouraging or prohibiting investment in any particular sector.[98]

(ii) The Registration Regime

With respect to investments not covered by the evaluation regime, the Vu Khoan - Barshefsky Exchange envisions a phased- in registration regime:

(a) Within 2 years of entry into force of the BTA, apply a registration regime for investment licensing in respect of projects investing in industrial zones and export-processing zones; projects with export rate of at least 50 percent of products; projects having investment capital of up to USD 5 million;

(b) Within 6 years of the entry into force of the BTA, apply a registration regime for investment licensing in respect of projects in manufacturing with investment capital of up to USD 20 million;

(c) Within 9 years of the entry into force of the BTA, apply a registration regime for investment licensing in respect to other projects, except those covered by the evaluation regime.[99]

The Vu Khoan — Barshefsky Exchange also provides for licensing principles procedures in the case of investments subject to the registration regime:

(a) The registration procedure shall require only the provision of basic information concerning the investor and proposed investment. Such registration shall be promptly approved and issued without the attachment of any conditions except as otherwise provided in Annex H to the BTA and the Vu Khoan - Barshefsky Exchange;[100]

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[98] Vu Khoan — Barshefsky Exchange, Para. 3

[99] Vu Khoan — Barshefsky Exchange, Para. 2

[100] Annex H relates to certain reservations of rights made by the US.

(b) A US national or company shall, except as otherwise provided in Annex H and this letter, be allowed to choose its local partner (if any), the location of its investment, the form of investment, the apportionment of their investment and to decide all matters relating to the operation of such investment, consistent with generally applicable Vietnamese laws and regulations;

(c) In no case shall the registration regime be applied on a basis less favorable than that accorded to nationals and companies of Vietnam or of any third country.[101]

The Vu Khoan — Barshefsky Exchange thus binds the GVN to implement the BTA in a robust manner, such that the BTA will be implemented both in letter and in spirit.

(iii) Conclusion

The entry into force of the BTA on December 10, 2001 represents a dramatic change in the structure and administration of Vietnam's Foreign Investment Law. When the market access provisions of the BTA are considered in conjunction with the Vu Khoan — Barshefsky Exchange, the conclusion that leaps out is that there is nothing in Kazakhstan that comes close in terms of demonstrating commitment to the attraction of FDI.

3. Recent Improvements in Vietnam's FDI Climate

Vietnam, like Kazakhstan, boasts a dynamic and expanding FDI sector. While the Asian Financial Crisis has clearly had a negative impact, the FDI sector has nevertheless shown clear signs of recovery as noted by the multilateral agencies. The World Bank reports that foreign direct investments in Vietnam in 2001 measured close to US$ 1 billion, an increase of 200 million over 2000.[102] FDI as a percentage of GDP is higher in Vietnam than in other low- income countries.

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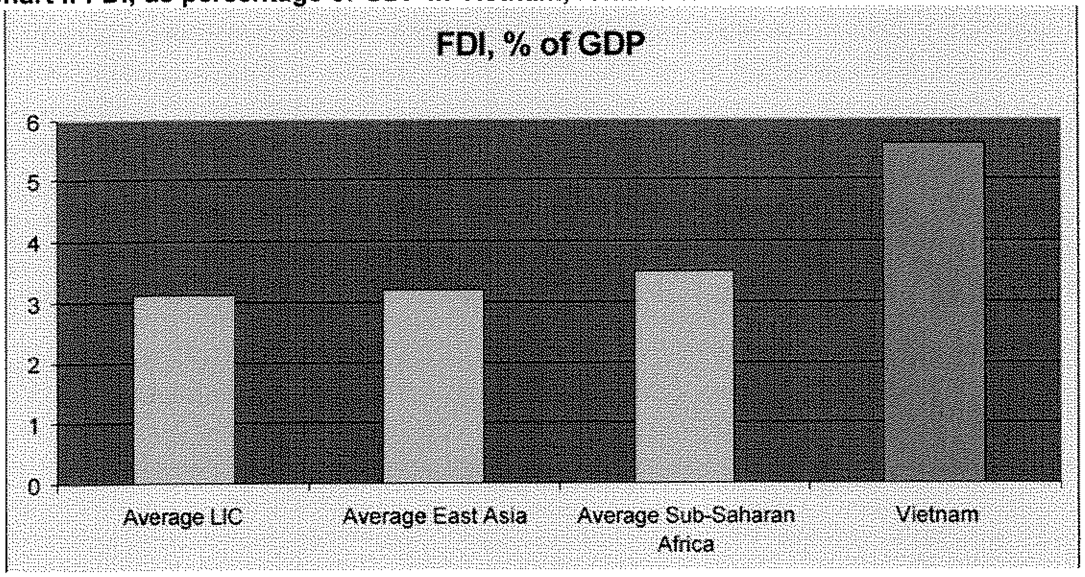
[101] Vu Khoan — Barshefsky Exchange, Para. 5.

[102] *See World Bank,* VIETNAM ECONOMIC MONITOR, at 8 (Spring 2002).

Chart I: FDI, as percentage of GDP in Vietnam, relative to other Low Income Countries[103]



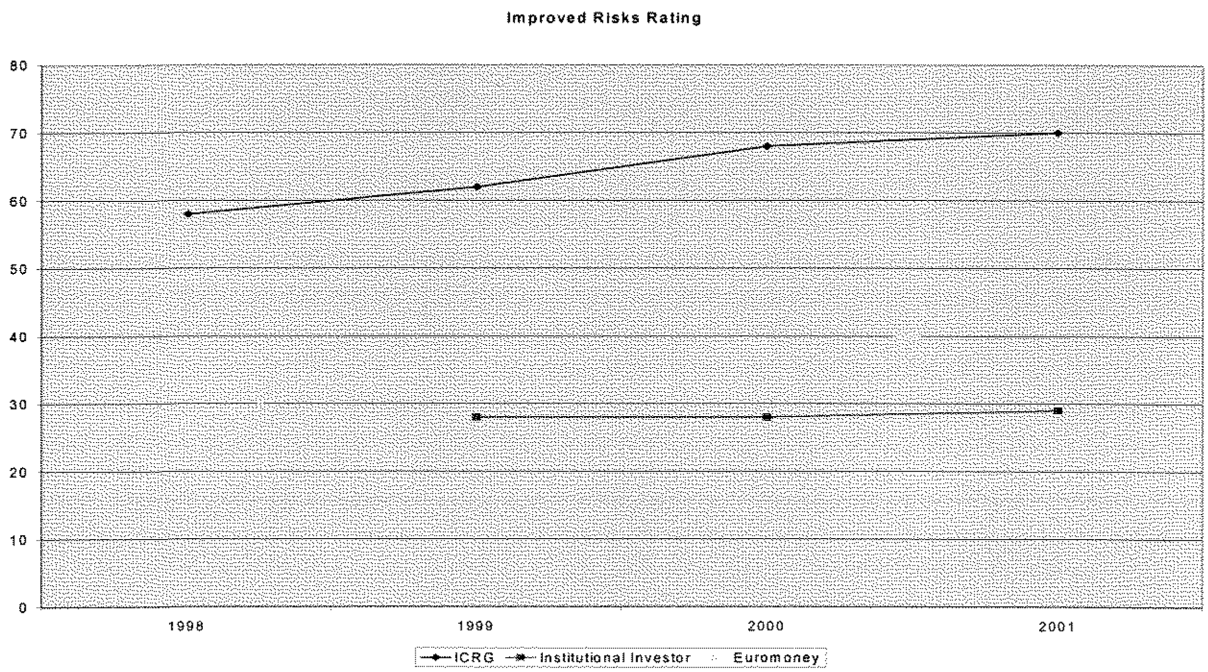
Political stability coupled with renewed export potential under the BTA has improved foreign investor confidence. Thus, 2001 marked a turning point for FDI in Vietnam according to the World Bank:

> Enquiries among foreign business associations in Vietnam suggest that over 2001, and especially in the 4th quarter of 2001, foreign companies have shown increasing interest in Vietnam as an investment location. Political stability and the potential for exports to the US under the BTA (which became effective in December), are the most cited reasons for the renewed interest among foreign investors. Also, according to Vietnam's National Administration of Tourism more than 440,000 people entered Vietnam to "explore business opportunities" in 2001. This is a 17 percent increase compared to the previous year. FDI is expected to continue to strengthen over 2002, to reach approximately US$ 1.2 billion. FDI inflows from 3 ongoing foreign investment projects in the energy sector will assure Vietnam of around US$ 800 million a year in 2002-2003 period.
>
> Several smaller scale foreign investors in production and manufacturing made commitments in Vietnam last year. In addition the tourism industry, trade development, and the education sector have been favored by foreign investors. New foreign investments stem both from companies that are increasing their capacity as well as from newly established enterprises, some of which are relocations to Vietnam from other countries in the region. Japan, Taiwan, the UK, the Netherlands and Singapore were the

[103] *See* Susan J. Adams (Senior Resident Representative, IMF Hanoi Office), *PRGF Experience in Vietnam,* presented at AIM/IMF seminar, Manila (July 11-12, 2002), *available at* http://www.imf.org/external/np/dm/2002/052402.htm.

top investors in Vietnam in 2001, accounting for around 44 percent of disbursed investments.[104]

The World Bank also cites steadily improving investor risk ratings for Vietnam — issued each year by the International Country Risk Guide, Institutional Investor Magazine, Euromoney, and Moody's Investors Service — as independent evidence of a steadily improving investment environment in Vietnam. The World Bank notes that all four risk assessment organizations have given Vietnam higher marks in terms of overall risk rating each year since 1998.[105]



The World Bank predicts that FDI in 2002 will surpass US$ 1.2 billion. Like Kazakhstan, Vietnam benefits from significant foreign investment in its energy sector, resulting in approximately US$ 800 million a year in energy-sector FDI inflows.[106] IMF statistics demonstrate that foreign investment in Vietnam's industrial sector has increased steadily since 1995.

[104] *See* World Bank, VIETNAM ECONOMIC MONITOR at 9-10 (Spring 2002).

[105] *Id.* at 9.

[106] *Id.*

Foreign Investment in Vietnam's Industrial Sector (Includes Oil and Gas Sectors)[107]

	1995	1996	1997	1998	1999	2000
In Billions of Dong	25,933	31,562	38,878	48,358	58,514	69,411
In Percent of Total Industrial Production	25.1	26.7	28.9	32.0	34.7	35.5

The IMF also reports that the SBV's balance sheet shows that total net foreign assets in Vietnam also have increased steadily since the mid 1990s.

Foreign Assets, in Billions of Dong[108]

1996	1997	1998	1999	3/1999	6/1999	9/1999	12/1999	3/2000	6/2000	9/2000
20.0	25.6	29.1	48.0	51.8	51.1	51.7	50.9	49.8	52.2	58.7

The IMF concluded that the BTA would help Vietnam further develop its FDI flows in 2002, stating as follows:

> FDI disbursements are expected to peak in 2002-03 at US$1.5 billion (about 5 percent of GDP), reflecting the completion of a US$1.4 billion oil and gas sector project with a consortium led by BP-Amoco and two other projects totaling some US$1 billion. Assuming an improvement in the investment climate and a recovery in East Asia starting in the latter half of 2002, FDI disbursements are projected to average US$1.3 billion over the medium term, above the depressed levels seen in the last three years. In particular, the recent ratification of the USBTA is likely to have a positive impact on FDI as more U.S. firms enter Vietnam.[109]

In sum, the signs of recovery from the regional financial crisis and improvements in FDI are clear.

4. Conclusion

Unlike Kazakhstan, Vietnam has committed in the BTA and the Vu Khoan — Barshefsky Exchange to comprehensive market access measures as well as a fundamental change in the structure and administration of the Vietnamese foreign investment laws. The GVN has also committed to extend all benefits and privileges provided US nationals and companies under the BTA to EU and other foreign companies. This strong commitment to FDI exceeds that evidenced by the current laws of Kazakhstan. The improving FDI picture in Vietnam, and its policy drivers, strongly point to market-economy treatment for Vietnam.

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[107] Second Review, Statistical Appendix at 63.

[108] *Id.*

[109] Second Review, Annex IV at 47-48.

VII. The GVN Does Not Own or Control the Means of Production

Summary of Comment

Vietnam compares favorably to Kazakhstan in terms of its expanding private sector. The GVN continues to encourage private sector growth through favorable policies and a renewed push in SOE reform. The growing role of the private sector, the shrinking role of the state-owned sector and the opening of Vietnam's markets to investment and competition support a finding that Vietnam is a market-economy country.

The Department found that Kazakhstan's private sector performed well and contributed to the development of a market economy. Vietnam's private sector similarly contributes to an already-formed market economy that continues to develop.

1. Private Sector Development and SOE Reform in Kazakhstan

The Department, in its Kazakhstan Decision, examined the extent to which the "private sector is thriving in Kazakhstan" in terms of privatization of industrial firms or SOEs. The Department found in Kazakhstan a rapidly expanding private sector limited only slightly by government reluctance to give up an ownership stake in several large SOEs in a handful of strategic sectors involving both natural monopolies (i.e., utilities, transportation) and regular commercial sectors. The Department noted specifically in the Kazakhstan Decision that:

> In 1995, the GOK implemented the Law on Privatization to enable the GOK to privatize virtually all segments of the economy. Specifically, the Law on Privatization gives the State the right to sell a number of government-owned enterprises.[110]

The Department also noted that:

> Privatization reforms in Kazakhstan were quickly implemented from 1995-1997, with the private sector share of the economy climbing from 25 percent to 55 percent. Privatization during this period included enterprises in virtually all sectors of the economy, and drastically reduced the share of state ownership.
>
> Privatization efforts have slowed since 1997. Between 1998-2000, the private sector share in Kazakhstan grew from 55 percent to 60 percent. As a result, a number of large companies remain in majority state ownership.

[110] *See* Kazakhstan Decision at 9.

In addition, the GOK continues to have minority holdings in enterprises operating in various sectors of the economy.[111]

Although the Department acknowledged a slowdown in SOE reform since 1997, the Kazakhstan Decision ultimately reflected the Department's finding that "[c]ompetition in major sectors of the economy indicates that market forces are largely dictating output and pricing decisions."[112] Vietnam's efforts in the development of the private sector and in SOE reform compare favorably with Kazakhstan's efforts.

2. The Continuing Expansion of Vietnam's Private Sector

Steady and significant private sector growth that has taken place despite the slower-than-expected SOE reform. The World Bank reports that private sector employment more than doubled between 1996 and 2000. As of 2000, the private sector held three times as many jobs as SOEs. The private sector contributed 15 percent to industrial growth between 1995 and 2000, and 43 percent of total export growth between 1999 and 2001. Estimates suggest that close to one million people are employed in this private corporate sector in Vietnam. This is about half as many as in the SOEs. In addition, approximately two million households are engaged in business operations, and 4,000 non-agricultural co-operatives.[113]

Vietnam's Enterprise Law reforms have either eliminated or reduced most business licensing restrictions and registration costs. Under the new law, business licensing requirements in 145 (out of 400) sub-sectors were lifted in 2000, making establishment of private firms considerably easier. Decree 30, also issued in 2000, led to revocation of 61 licenses and permits. Business registration costs also have been cut significantly and the approval process shortened from 1-2 months to 10 days on average, and even less for small enterprises and in urban areas.[114]

With the new Enterprise Law in place, over 14,000 private SMEs joined Vietnam's market economy in 2000. This figure stands in stark contrast to the approximately 3,000 new SME business registrations in each of the previous three years. In addition, since the Enterprise Law took effect in January 2000, an average of 1,200 new SMEs have registered each month.[115] As of the end of August 2001, there were approximately 26,000 SMEs registered in Vietnam, a 60 percent increase over the

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[111] *Id.*

[112] *Id.* at 10.

[113] *See World Bank*, VIETNAM ECONOMIC MONITOR, at 16 (Spring 2002).

[114] *See* IMF, Vietnam: 2001 Article IV Consultation and First Review Under the Poverty Reduction and Growth Facility and Request for Waiver and Modification of Performance Criteria II, at 11 (January 2002), ("First Review") *available at* http://www.imf.org/external/pubs/cat/longres.cfm?sk=15580.0.

[115] *See* Vietnam Development Report at xii (2002).

number of registered enterprises in January 2000.[116] Nearly 70 percent of the newly registered SMEs are new entities, implying significant new investment; the remaining 30 percent have transformed themselves from informal household enterprises to formal SMEs which suggest that confidence in the formal system has improved.[117]

The World Bank notes the following:

- Employment in the formal private sector more than doubled between 1996 and 2000. This new corporate sector created more than three times as many jobs as the SOEs and almost twice as many as the informal household sector;

- The robust growth in the number of new enterprise registrations over the past two years continues and is likely to speed up growth in private sector activities in the next few years. The private sector already contributed 15 percent to industrial growth between 1995 and 2000, and 43 percent of export growth in the past two years. Increased private sector activity in labor-intensive and export oriented industries is a good portent that Vietnam's economy and its workers will continue to benefit from trade liberalization and further integration into the global economy.[118]

The unmistakable expansion of the private sector is the result of policy commitments made by the GVN.

The GVN reiterated its commitment to the private sector in the MEFP submitted to the IMF:

> We recognize the private sector as an important component of Vietnam's economy, and are taking steps to further boost domestic and foreign investment. The business climate will be made more open, fair, and predictable. In particular, and in advance of the timeframes under the USBTA, we are preparing regulations to further open to foreign investors areas in the services (including most retail sales and distribution), agribusiness, and fishery sectors. The dual pricing system for FIEs will be phased out by 2003 for almost all charges and fees, except those for power, which will be removed by 2004. Performance requirements for FIEs will also be phased out. In addition, tax incentives for FIEs will be streamlined and rationalized relative to domestic enterprises.[119]

In sum, the Vietnamese private sector will continue to grow because of favorable GVN policies. In addition, the GVN is pushing ahead with financial sector reform, including

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[116] First Review at 11.

[117] *See The World Bank in Vietnam*, VIETNAM ECONOMIC MONITOR at 16 (Spring 2002).

[118] *Id.*

[119] Second Review, Attachment II at 64.

liberalizing interest rates, restructuring the banking system, and establishing a stock exchange, all of which should aid private sector development.

3. SOE Reform in Vietnam

The World Bank reports that beginning in 1998, Vietnam embarked on a serious and sustained effort to encourage equitization of SOEs and allowed some foreign shareholding in certain SOEs. In March 2001, the GVN put in place a five-year SOE reform plan with annual targets for the first three years of the five-year program. The primary goal of the plan was to reform approximately 1,800 of the remaining 5,500 SOEs over a three-year period through equitization, divestiture or liquidation.[120] The plan also contemplates implementation of trade opening measures, including the announcement in May 2001 of a five year import-export regime that significantly advances the removal of a number of quantitative restrictions on imports in sectors dominated by SOEs.[121]

According to the World Bank, Vietnam completed 200 SOE equitizations in 2001, of which 150 instances involved non-state ownership exceeding 65 percent of total shares. In the first quarter of 2002, the World Bank reports an additional fifty SOE equitizations, the vast majority of which involved non-state ownership in excess of 65 percent of total shares.[122] In addition, the GVN made an effort to expand the authority of provinces to rule on divestiture of SOEs with capital not exceeding 5 billion dong, an increase of 4 billion dong over the terms of the old law. Like Kazakhstan however, Vietnam's ambitious SOE reform plans have moved more slowly than expected.

The GVN, responding to slowed reform, has adjusted its reform plans accordingly:

> **SOE reform** will be reinvigorated, in order to make up for slippages so far. To this end, we will rephase our original three-year roadmap and will soon announce an SOE reform program covering 2002–04. In consultation with Bank staff, our agenda of actions is as follows:
>
> - We have put in place in April 2002 Decree 41 which specified guidelines on safety nets for all SOEs, and in June 2002 will adopt a decree on debt settlement for those SOEs being equitized and consistent with budget resources earmarked for such reforms.
>
> - A new equitization decree will also be issued in June 2002, which provides for, among others, the removal of caps on first-time shareholdings in equitized enterprises.

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[120] First Review at 11.

[121] *See Vietnam: Selected Issues and Statistical Index* (International Monetary Fund Country Report No. 02/5) (January 2002), *available at* http://www.imf.org/external/pubs/cat/longres.cfm?sk=15581.0.

[122] *See* World Bank, VIETNAM ECONOMIC MONITOR at 23 (Spring 2002).

- We will equip as of June the special monitoring and coordinating unit in the National Steering Committee for Enterprise Reform and Development with enforcement powers to oversee implementation of the SOE reform plan.

- We are redoubling efforts to complete our equitization sale, and liquidation of 400 SOEs as targeted under the PRSC through end-June 2002. In line with the original SOE reform framework, the roadmap will lay out an additional 1,400 SOEs subject to ownership transformation over the next two years. We will also set a target through June 2003 on equitization, sale, and liquidation in consultation with Bank staff in the context of the follow-up PRSC.[123]

The redoubled SOE efforts are now bearing positive results.

4. Conclusion

With an expanding private sector spurred on by favorable policies and a renewed push in SOE reform, Vietnam's record compares favorably with that of Kazakhstan. The growing role of the private sector, the shrinking role of the state-owned sector and the opening of Vietnam's markets to investment and competition indicate that, the words of the Kazakhstan Decision, "market forces are largely dictating output and pricing decisions," apply in Vietnam. This factor supports a finding that Vietnam is a market economy.

[123] Second Review, Attachment II at 66.

VIII. The GVN Does Not Control Resource Allocation, Prices, or Output Decisions

Summary of Comment

Vietnam, like Kazakhstan, has witnessed in recent years a dramatic reduction in government control over enterprise resource allocation and prices. The Department should apply the same standard to Vietnam as it did to Kazakhstan in evaluating the extent to which the GVN does not control resource allocation, prices, or output decisions. An objective analysis focusing on (i) the degree to which individuals and businesses can engage in entrepreneurial activities; (ii) the extent of price liberalization; and (iii) resource allocation generally, and banking sector reform in particular will find that this factor supports a finding that Vietnam is market economy.

1. The Department's Approach in the Kazakhstan Decision

In the Kazakhstan Decision, the Department focused its analysis on three main factors: (i) the degree to which individuals and businesses can engage in entrepreneurial activities; (ii) the extent of price liberalization; and (iii) resource allocation generally, and banking sector reform in particular. The Department concluded that Kazakhstan has implemented a series of laws that protect the rights of entrepreneurs and ensure that private entrepreneurs can make independent investment, production, distribution, and pricing decisions. In addition, the Department determined that price liberalization in Kazakhstan was completed in the mid-1990s across all sectors, except for price controls in "natural monopolies" codified by the government in 1998. Finally, the Department concluded that Kazakhstan implemented various banking laws throughout the 1990s that "strengthen Kazakhstan's private banking sector and help make it an effective allocator of capital."[124] The GVN, like the government in Kazakhstan, has an impressive track record in terms of creating an attractive climate for encouraging entrepreneurship, a general elimination of price controls, and a relatively liberalized banking sector.

2. Expansion of the Number of Small and Medium Enterprises

As noted above, the GVN continues to take active measures to remove barriers to the expansion of the private sector. As a result, Vietnam has seen the proliferation of SMEs that have effectively whittled away at the government's influence over resources and prices. This proliferation signifies a large and thriving private sector operating in a market economy.

3. The GVN Continues to Lift Price Controls

[124] *See* Kazakhstan Decision at 11 – 12.

The GVN recognizes the right of enterprises to set their own prices and the limited nature of the state in price management. According to the Ordinance on Pricing the scope of assets, services or goods subject to controlled pricing of the State is limited to (i) land, water surface or significant natural resources, (ii) assets of the State for leasing out or for sale, (iii) goods or services of importance to the nation and (iv) goods or services under monopoly. Other than those listed, individuals or organization providing goods or services are free to set their own prices.[125] This is similar to the situation in Kazakhstan, as the Department recognized that all national governments will exercise some form of price regulation, especially for natural monopolies such as transportation and natural resources.[126]

Even in natural monopolies, the GVN continues to make significant progress. As one example, Vietnam's gas retailers were subject to a government price cap in an effort to provide an incentive for Vietnamese consumers to start using gas. Heavy losses finally prompted a change in February 2001 such that Vietnam moved the price of gas closer to its import price. In other words, the GVN ultimately demonstrated a willingness to let Vietnamese consumers carry the burden of a price increase.[127] This will continue as the market economy in Vietnam grows further.

4. Continued Push to Reform the Banking Sector

Banking sector reforms in Vietnam — like the banking reforms that the Department recognized in Kazakhstan — continue to accelerate. The World Bank notes the following recent and significant reforms in Vietnam's banking sector:

- Establishing a Bank Restructuring Committee and initiating restructuring of non-state Joint-Stock Banks ("JSBs") in Ho Chi Minh City;
- Closing and merging 4 JSBs in Ho Chi Minh City;
- Issuing prudential regulations for banking operations, financial ratios for safe operation of credit institutions; authority of banking inspectors; deposit insurance and collateral;
- Issuing new regulations for operations of banks in respect of calculating provisions against their non-performing loans on a quarterly basis;
- Assigning full responsibility and accountability for all aspects of credit cycle to banks; requiring loan officers in commercial banks to check not only the capacity of the borrower to repay a loan but also to check the feasibility and viability of the project that is to be financed;

[125] Ordinance No. 40-2002-PL-UBTVQH 10 (April 26, 2002).

[126] *See* Kazakhstan Decision at 21.

[127] *See* Economist Intelligence Unit, Country Commerce: Vietnam at 37 (2002).

- Replacing fully administered interest rates on dollar and dong loans by a more flexible interest-rate system under which the dollar rate is anchored in SIBOR, while the dong rate is allowed to vary around a SBV base rate subject to a ceiling rate;

- Broadening the scope for financial leasing and improving regulations to create a more attractive operating environment for domestic and foreign leasing companies;

- Freeing interest rates on foreign currency lending by banks in Vietnam and off-shore banks;

- Increasing autonomy of commercial banks by allowing them to set up internal systems for clearing payment transactions without SBV involvement, but with SBV permission;

- Providing a framework for cross-border payment transactions;

- Allowing all joint-venture and foreign banks operating in Vietnam to take collateral in the form of land from local clients (land use rights and land certificates);

- Allowing joint-venture banks to receive hard-currency deposits from Vietnamese clients;

- Bringing banking regulations closer to international accounting norms;

- Permitting banks to make decisions on the terms of any given loan, including domestic banks' lending to foreign borrowers in Vietnam.[128]

The World Bank provides this positive assessment of Vietnam's recent reforms in the banking sector:

> In general the State Bank of Vietnam has set out to grant commercial banks more autonomy in 2002 by adopting the view that 'what is not explicitly forbidden is allowed' in relation to lending operations. This is the first step towards a fundamentally new way of regulating the banking industry.
>
> The Government has adopted a comprehensive banking reform program focused on the restructuring of banks and on improvements in the regulatory and supervisory framework. In the short-term, the reforms will

[128] *See* World Bank, VIETNAM ECONOMIC MONITOR, at 24 (Spring 2002).

ensure the stability of the banking system, and in the medium-to-long term it will promote better mobilization of domestic resources and improve allocation of those resources to commercially viable activities.

The restructuring of non-state joint-stock banks (JSBs) has picked up momentum after a delayed start. As of February 2002, 13 JSBs had been closed or merged, reducing their number to 39 from 52. Several JSBs are also being rehabilitated with private shareholders providing additional capital.

Implementation of detailed restructuring plans developed by Vietcombank (VCB), Incombank (ICB), Vietnam Bank for Agriculture and Rural Development (VBARD), and the Bank for Investment and Development (BIDV) are underway. The State Bank of Vietnam (SBV) has issued the decision that would govern the phased and conditional recapitalization of the SOCBs. Several SOCBS have established credit committees and others are in the process of establishing them. Financial audits of large SOCBs by international auditors using International Accounting Standards have been completed for VBARD and BIDV, the other two are expected to be completed by May 2002.

The new rules for classifying non-performing loans (NPLs) consistent with international standards, have been issued. The recognition of all NPLs using new rules is expected to be completed this year while the provisioning is expected to be phased.[129]

The GVN has also committed to the IMF and the World Bank that it will improve the performance of state-owned banks. The "Milestones for SOCBs" listed below are the minimum conditions in the context of the first and second PRGF reviews, as agreed by the SBV with the IMF and World Bank, for the purpose of recapitalization of the four large state-owned commercial banks (SOCBs). Bank-specific milestones are expected to be developed consistent with these overall milestones and issued as a directive by the SBV.

Milestones for end-March 2002:

(i) Establish credit risk management and internal audit committees (where they do not already exist) and submit to the SBV for review the manual of procedures for those committees, revised to incorporate improvements relevant to each SOCB's recent experience.

Status: Credit risk management and internal audit committees have been set up, but three of the four SOCBs have not yet submitted manuals of procedures for those committees to the SBV for review. There are some legal issues concerning the

[129] *Id.* at 17-18.

independence of the IAS audit committee. Technical assistance from the Bank and the Fund is being sought.

(ii) Resolve at least D 1.4 trillion of potentially recoverable nonperforming loans ("NPLs") of the four large SOCBs. Resolution targets for individual SOCBs will be agreed by the SBV and SOCBs and communicated to the World Bank and the International Monetary Fund.

Status: Two of the four large SOCBs submitted reports on NPL resolution as of end-March 2002 as required under Decree 01/2002/CT-NHNN. A third one submitted a report as of end-February 2002.

Milestones for end-June 2002:

(i) Agree audit qualifications from year 2000 audit that are to be eliminated by year-end and sign contracts for external audits for year 2001.

Status: Signing of contracts for audits of 2001 financial statements by international auditing firm moved to end-July.

(ii) Agree on September 2002 targets for loan resolution.

Milestones for end-September 2002:

(i) Resolve at least D 3.5 trillion of potentially recoverable NPLs of the four large SOCBs. Resolution targets for individual SOCBs will be agreed by the SBV and SOCBs and communicated to the World Bank and the International Monetary Fund.

Milestones for end-December 2002:

(i) Complete year 2001 external audit, eliminating qualifications agreed in June.

(ii) Pass a special SBV examination of credit file documentation. (Examples of features to monitor are: inclusion of appropriate signatures on credit documents; centralization at headquarters of credit extensions throughout the branch network to a single borrower; existence of a cash flow analysis of borrowers, even for collateralized loans; existence of written government guarantees for directed lending; etc.).

(iii) Agree on March 2003 targets for loan resolution based on the new loan classification as defined in Decision 1627.[130]

The IMF's overall assessment of the GVN's recent banking reforms and implementation of commitments is positive. The IMF reports that

[130] Second Review, Attachment II, Annex I at 76.

> The four large SOCBs started implementing their restructuring plains, aimed at meeting milestones set under an SBV directive. At end-December, the criteria for loan classification were adapted (Decision 1627) to move closer to international standards (a structural performance criterion), and external audits for all four SOCBs will be completed by end-June, somewhat behind schedule. In addition, a special unit in the SBV to monitor SOCB reform was made operational in November 2001 (a structural benchmark). However, progress in strengthening credit risk management fell short of the milestones established with the banks.[131]

The following box summarizes these reform efforts.

[131] Second Review, Attachment II at 61.

Box 3. Vietnam: Progress in Banking Reform

Under the second-year PRGF-supported program, banking reform remains focused on the four large state-owned commercial banks (SOCBs). These banks still dominate the banking system and are heavily exposed to the troubled state-owned enterprise (SOE) sector. At end-2001, they accounted for 72 percent of all bank liabilities, 91 percent of outstanding SOE bank credit (and all new SOE bank credit extended in 2001), and 75 percent of nonperforming loans (NPLs). Therefore, current reforms center on restoring the financial health of SOCBs by putting them on a commercial footing, strengthening credit risk management, and stemming NPLs. At the same time, more needs to be done to improve the legal, regulatory, and supervisory frameworks, and to consolidate the joint-stock banks (JSBs).

Vietnam: Selected Banking Indicators, 2001

	Share (in percent) in total of:				
	Bank credit outstanding	SOE credit outstanding	New credit during 2001	New SOE credit	Overdue loans
Four large SOCBs	71.9	91.4	81.6	118.2	74.7
VCB	8.2	14.4	1.3	9.5	12.8
ICB	20.0	26.8	29.5	45.8	40.1
VBARD	24.5	12.0	30.5	11.7	12.9
BIDV	19.3	38.2	20.2	51.2	8.9
Other banks	28.1	8.6	18.4	-18.2	25.3

Sources: State Bank of Vietnam; and Fund staff estimates.

The State Bank of Vietnam (SBV) adopted an overall SOCB restructuring framework in March 2001, centering on a phased and conditional recapitalization, and approved individual SOCB reform plans in September 2001. Reform efforts are being guided by a steering committee on financial restructuring of commercial banks and supported by an SBV assistance board that was made operational in November 2001.

In the past year, the following measures have been taken to advance the reform agenda:

- ***Commencing external audits at the four large SOCBs of their year 2000 financial statements based on international accounting standards*** (IAS), in order to help assess the true size of NPLs. These audits are expected to be completed by June 2002, and will be followed by IAS audits of the 2001 financial statements.
- ***Setting minimum conditions for a phased recapitalization of the SOCBs***, by issuing an SBV directive in November 2001 establishing milestones in terms of quantitative NPL resolution and performance targets.
- ***Moving loan classification closer to international best practices***, by adopting Decision 1627 in December 2001 (a structural performance criterion). In particular, banks will be required to classify the entire loan balance as overdue if any interest and/or principal payment becomes overdue. Implementation of the decision is expected to be completed by end-2002.
- ***Resolving NPLs totaling D 1.5 trillion by end March 2002***, slightly above the target of D 1.4 trillion (a structural performance criterion). Resolution efforts are being monitored by the assistance board and have been concentrated on collateralized loans so far, with recovery ratios around 50 percent, in part helped by the recent upturn in real estate prices.
- ***Establishing credit risk management and internal audit committees at the SOCBs***. However, more needs to be done to strengthen credit policies and procedures, by designing and implementing clear and focused credit manuals building on the SOCBs' recent experience.

The program for 2002 envisages the following next steps:

- ***The first phase of recapitalization is expected to take place in mid-year***, with banks having met the March NPL resolution targets and established credit risk management and internal audit committees. To become eligible for the next tranche of recapitalization, however, the four large SOCBs will need to further improve their credit risk management so as to pass a special credit file examination by the SBV, a milestone for end-December. A work program for this purpose is being drawn up for each of the SOCBs. They are also required to resolve at least D 3.5 trillion in NPLs on a cumulative basis by end-September, and to eliminate major qualifications on the 2000 IAS audits by year end, in consultation with Fund and Bank staff.

- ***For the next phase of recapitalization***, agreement and completion of future milestones will need to reflect the results from the recent audits and the new standards for loan classification, as well as the experience gained from the implementation of earlier milestones. The new milestones will also include a timetable for removing qualifications from the audits.

Finally, the IMF notes the following GVN policy actions and specific achievements:

> The State Bank of Vietnam (SBV) has agreed with each of the four large state-owned commercial banks (SOCBs) on a work program to prepare a credit manual containing all credit policies and procedures, which incorporates necessary improvements based on each bank's recent experience. These work programs have been prepared with Fund technical assistance and are already being implemented by SOCBs, including with external experts. The Prime Minister has approved a decision providing for the terms and conditions of recapitalization bonds for the SOCBs, which are fiscally sustainable and consistent with program understandings. Specifically, the decision provides for the issuance of such bonds totaling D 8 trillion (1.5 percent of GDP) over the period 2002-04, with a 20-year maturity at a fixed interest rate of 3.3 percent. The SBV has agreed with each SOCB on cumulative targets for the resolution of nonperforming loans (NPLs), which in the aggregate are consistent with the NPL resolution target of D 3.5 trillion set as a structural performance criterion for end-September 2002.[132]

Future milestones will be specified on the basis of experience with the implementation of earlier milestones and developments in SOCB conditions. The SOCBs will continuously improve performance against these milestones over three years, in addition to meeting these first-year milestones.

These extensive efforts confirm that Vietnam does not use banks to dictate the allocation of credit and financial resources. Rather, Vietnam is allowing banks to operate in a rational commercial level, consistent with the functioning of a market economy.

5. Conclusion

Vietnam, like Kazakhstan, has made significant strides in removing government control over pricing, output, and resource allocation decisions. This progressive reform can be tied to specific examples of price control reductions, improvement of the business environment for entrepreneurs and, finally, general reform in the banking sector. This progress confirms that this factor also supports a finding that Vietnam is a market economy.

[132] Second Review, Staff Report at 1-2.

IX. Other Relevant Factors

Summary of Comment

Vietnam's economic and investment agreements with the United States, the European Union, and the United Kingdom underscore the fact that the GVN has committed the country to an internationally backed program for significant and permanent economic reform and growth. Unlike Kazakhstan, Vietnam has made broad and sweeping commitments through these agreements. These agreements signal Vietnam's steady progress toward full membership in the global trade and investment community.

As detailed at the outset, VASEP respectfully requests that the Department weight heavily the significant commitments that Vietnam has made to the world in the form of various economic and investment agreements, including the US-Vietnam BTA, a long-standing cooperation agreement with the European Union (EU), and a bilateral investment agreement with the United Kingdom. Rather than merely setting out loose agendas for reform, these agreements represent real commitments on the part of the GVN to effect significant, sustainable, and deeply-rooted economic change in order to further integrate Vietnam into the global economy.

1. The US-Vietnam BTA

The BTA, as described in above, is one of the most detailed bilateral trade agreements ever signed by either the United States or Vietnam. VASEP has already noted above the significant and broad scope of reforms embodied by the BTA.

Many US government officials have also noted the comprehensive measures covered by the BTA. The USTR has stated that "the BTA marks a major shift of economic policy direction for Vietnam, setting a course for greater openness to the outside world; promoting economic reform and market principles, transparency in law and regulatory policy, and helping Vietnam to both integrate itself into the Pacific regional economy and build a foundation for future entry into the World Trade Organization."[133]

The Department therefore also should recognize the significance of the BTA and how it binds Vietnam to continued economic reform and liberalization of its market economy. Such irrevocable commitments go beyond any made by Kazakhstan and confirm that the market economy in Vietnam will continue to develop.

[133] *See Barshefsky Testimony.*

2. Agreements with ASEAN, the EU, and the United Kingdom

Vietnam has agreed to regional integration within the Association of Southeast Asian Nations ("ASEAN") through the ASEAN Free Trade Agreement ("AFTA") and its associated agreements. The AFTA will reduce import duties on ASEAN-origin items to 0-5 percent upon its full implementation. Through ASEAN, Vietnam also takes part in trade liberalization talks with China, EU, US Korea, Japan, Australia and New Zealand and the rest of APEC.

Trade and economic relations between the EU and Vietnam are based on the Co-operation Agreement (1980) between the European Commission (EC) and the member countries of the ASEAN.[134] The EC-ASEAN Co-operation Agreement is concrete evidence of the EU's recognition that Vietnam, as a member of ASEAN, is on the way to conducting its economic and trade activities in a WTO-consistent manner and that the Vietnamese market embodies the principles laid out in the GATT and WTO agreements, especially in terms of MFN treatment.

The Co-operation Agreement requires that all contracting parties accord each other most-favored-nation MFN treatment in accordance with the provisions of the General Agreement on Tariffs and Trade (GATT 1974). For those members of ASEAN, including Vietnam, that are not members of the WTO, the Co-operation Agreement lays out MFN provisions that mirror the GATT.

Although the EU concedes that Vietnam must continue to make progress in terms of opening up its trade regime and encouraging foreign investment, the Co-operation Agreement indicates the EU belief that Vietnam has made progress and that Vietnam is committed to making further progress. Vietnam is also committed to the Agreement, as the EU is Vietnam's largest trading partner and an important source of foreign investment for this burgeoning economy.

Agreements like the EC-ASEAN Co-operation Agreement and the US-Vietnam BTA are providing Vietnam with the structure it needs to improve its climate for foreign investment and to open its market further to foreign trade. More importantly, these agreements embody the growing sentiment in the international trading community that Vietnam is approaching full compliance with WTO rules related to non-discriminatory market access, national treatment, etc.

This August, the United Kingdom and Vietnam reached a bilateral Agreement on the Promotion and Protection of Investments. According to the US-Vietnam Trade Council the Agreement covers:

> [E]very kind of asset including, but not limited to (i) movable and immovable property and any other property rights such as mortgages, liens or pledges; (ii) shares in and stock and debentures of a company and any other form or participation in a company; (iii) claims to money or to any

[134] Vietnam acceded to ASEAN in 1995.

> performance under contract having a financial value; (iv) intellectual property rights, goodwill, technical processes, and know-how; (v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources. The Agreement extends protection for covered investments including the provision of MFN and national treatment; compensation from losses; protection from expropriation including guarantees on prompt, adequate, and effective compensation from losses; repatriation of investments and returns; investor-state dispute settlement including access to international arbitration mechanisms; and guarantees of dispute settlement between contacting parties through local tribunals.[135]

Like the US-Vietnam BTA, and Vietnam's ASEAN commitments to the EU, this bilateral agreement with the United Kingdom holds Vietnam to specific commitments that improve the overall climate for foreign investors.

3. Conclusion

These agreements, viewed collectively, indicate that the GVN has committed the country to an internationally backed program for significant and permanent economic reform and growth. Unlike Kazakhstan, Vietnam has made broad and sweeping commitments through these agreements. These agreements signal Vietnam's steady progress toward full membership in the global trade and investment community. Full accession to the WTO is therefore a realistic achievement in the near term and would confirm the progress that Vietnam has already made with regard to its market economy.

[135] *See Catalog of Legal Updates* at 15.

X. Vietnam is a Market-Economy Country

VASEP believes that the relevant benchmark for the Department's analysis is its Kazakhstan Decision. By all accounts, Vietnam meets or exceeds Kazakhstan in terms of general economic liberalization as well as specific reforms related to currency convertibility, labor rights, investment, state-owned enterprises, removal of price controls, and radical changes in the banking sector. Vietnam, however, has gone a step beyond Kazakhstan by committing itself to further liberalization through the BTA, the IMF, AFTA and other international agreements. Vietnam has engaged for the last decade in an economic reform program of extraordinary range and depth, and the country now is beginning to reap the benefits of its economic progress in the form of expanding trade with the world, improved foreign investor confidence, private sector growth, and a higher standard of living. For these reasons, we respectfully submit that an objective analysis will conclude that Vietnam is a market-economy country for purposes of this and future US antidumping investigations.

* * *

Please let us know if you have any questions regarding this submission.

ANNEX A[136]

Reform actions 1998 – March 2002

Integrating into the World Economy, 1998 – March 2002

Government actions include:

1998

- Lowering the maximum import tariff to 50 percent (exceptions remain for six groups) and reducing the number of tariff-rates to 15;
- Liberalizing trading rights of domestic firms by allowing them to export and import goods directly, without a license, though residual restrictions remain for importers;
- Allowing private firms to import fertilizer;

1999

- Allocating rice export quotas to non-state firms for the first time (by listing 5 private firms and 4 joint-ventures among the 47 authorized primary rice exporters Decision 273/1999/QD-TTg, December, 24, 1999) and allowing foreign firms to buy rice directly from farmers for export purposes;
- Auctioning 20 percent of garment export quotas;
- Encouraging trading activities by reducing the foreign exchange surrender requirement from 80 percent to 50 percent of foreign exchange earnings (Decision 180/1999/QD-NHNN1, August 30, 1999);

2000

- Removing quantitative import restrictions on 8 out of remaining 19 groups of products i.e. including fertilizer, liquid soda, ceramic goods, plastic packaging, DOP plasticizer, ceramic sanitary ware, electric fans, and bicycle (Decision 242/1999/QD-TTg, December 30, 1999, effective April 1, 2000);
- Signing the bilateral trade agreement with the US in July paving the way for MFN access of Vietnamese exports to the US market, gradual opening up of Vietnam 's economy, for goods and services as well as investments;
- Approving a roadmap for AFTA tariff reduction during 2001-2006 wherein most tariff lines will lines will have their tariff reduced to 20% by early 2003 and to 5% by early 2006;

2001

- Enhancing the scope for long-term planning among traders by drawing up export and import plans for the period 2001-2005, instead of the hitherto one year schemes (Decision 46/2001, April 4, 2001);
- Removing QRs multilaterally on all tariff lines of the following groups of products: liquor, clinker, paper, floor tiles, construction glass, some types of steel, and vegetable oil. (Decision 46/2001 dated April 4, 2001);
- Reducing the foreign exchange surrender requirement from 50 to 40 percent (Decision 61/2001/QD-TTg, April 25, 2001);
- Abolishing the quota allocation for rice exports and fertilizer imports (Decision 46/2001/QD-TTg April 4, 2001);
- Moving 713 tariff lines from the Temporary Exclusion List (TEL) to the Inclusion List (IL) (Decree 28/2001/ND-CP)
- Permitting all legal entities (companies and individuals) to export most goods without having to acquire a special license by revising the implementing decree of the Trade law (Decree 44/2001/ND-CP, August 2, 2001);
- Establishing an export support credit sourced from the State Development Assistance Fund, aiming to support enterprises, economic organizations and individuals to promote exports (Decision 133/2001 QD-TTg, September 10, 2001);
- Reducing the number of items that FIEs have to export from 24 to 14, including such items as tiles, ceramics, footwear, electric fans, plastic products, and common paints (Decision No. 718/2001/QD-BKH);
- Permitting FIEs to engage in exports of coffee, minerals, certain wood products, and certain textiles and garments (Circular 26/2001/TT-BTM, December 2001);

2002

- Detailing a list of goods and tax rates for implementing the Agreement on the Common Effect Preferential Tariffs (CEPT) Scheme of ASEAN countries for the year 2002. Based on the schedule, 481 items were moved in to Inclusion list with tariff lower than 20%. To date there are 5558 lines in the Inclusion List, 770 in the Temporary Exclusion List, 53 in the Sensitive Agricultural List and 139 in General Exclusion List (Decree 21/2002/ND-CP, February 2002)
- A Government negotiation team has started working sessions on WTO accession in Geneva (April 2002)

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[136] All information in Annex A is taken directly from World Bank, VIETNAM ECONOMIC MONITOR at 9 (Spring 2001).

Improving the Climate for Enterprise, 1998 – March 2002

Government actions include

1998

- Issuing a new Decree on foreign investment providing additional incentives to foreign investors;
- Initiating the private sector donor dialogue under the auspices of the Consultative Group of donors in order to better understand the constraints faced by the private sector, especially foreign investors;
- Amending the Law on Promotion of Domestic Investment, allowing domestic and foreign organizations, and individuals, to buy shares or to contribute capital to domestic enterprises, including equitized SOEs, and provided additional incentives for new domestic investment;

1999

- Approving the Enterprise Law and issuing decrees to implement it, eliminating a number of discretionary restrictions on the establishment of private business (May 99);
- Providing regulations on secured transactions (Decree 165/1999/ND-CP), enabling mortgages of land-use rights and houses, and collateralized lending on the back of assets ranging from materials, machines, and production equipment to bonds, shares, and property rights;
- Providing regulations on the organization and operation of a Development Support Fund (Decree 50/1999/ND-CP on July 8, 1999). The Fund is a point of access for medium and long term development finance for private and public enterprises;
- Revising the Land Law to convert, transfer, lease, provide as collateral and capital contribution of land use-rights to banks or to joint-ventures;

2000

- Implementing the Enterprise Law effectively by revoking unnecessary business licensing restrictions in 145 industries, trades and services, and easing private entry;
- Revising the Foreign Investment Law to create more favorable conditions for foreign investors. Improving access to foreign exchange, allowing mortgaging of land by foreign bank branches in Vietnam, permitting automatic registration for export-oriented foreign investment, and making provisions for the Government to issue guarantees for large infrastructure projects;
- Amending the 1993 Law on Petroleum making the investment and regulatory environment for foreign investment in the oil and gas sector more attractive;
- Establishing the first stock exchange center in Ho Chi Minh City, which is dealing in treasury bonds and shares of listed companies.

2001

- Increasing openness and information by establishing an Enterprise Information Center under MPI on enterprises registered under the Enterprise Law (Decision 75/2000/QD-BKH of Feb 28, 2001);
- Approving two BOT projects in the energy sector: Phu My 2.2 power plant with EdF led consortium of TEPCO and GEC (US$400 million) and Phu My 3 combined cycle power project with BP (US$450 million), thereby creating precedents for more BOTs in infrastructure (Jan, 2001);
- Providing detailed guidelines and listing all necessary documentations for foreign invested enterprises to mortgage land-use rights and assets attached thereto to Vietnamese credit institutions and joint-venture banks (Inter-Circular 772 NHNN/TCDC, May 2001);
- Allowing overseas Vietnamese to hold land-use rights, and decentralizing control and monitoring of land-use rights to enhance the functioning of the real estate market (June 2001);

Reforming State-Owned Enterprises, 1998 – March 2002

Government actions include

1998

- Issuing Decree 44 to simplify the process of equitization and allow limited foreign shareholding in equitized SOEs;
- Issuing Directive 20 to adopt a wider menu of reform options for SOEs, e.g. outright sale, transfer to employees competitive bidding, for purchasing SOEs on SOE shares, leases, management contract etc.;
- Announcing annual targets for equitizations for 1998 – 2000;
- Equitizing 52 SOEs;

1999

- Completing classification of SOEs into three groups: profitable, temporary loss-makers and permanent loss-makers;
- Issuing decree and regulations for outright sale, transfer to employees, and lease of small SOEs, without requiring conversion of SOEs into joint-stock companies as required for equitization;
- Selecting 100 large troubled SOEs for independent diagnostic audits (i.e. operational reviews);
- Equitizing 151 SOEs;

2000

- Selecting three general corporations (Seaprodex, Vinatex, and Vinacafe) for developing specific action restructuring plans and completing preliminary consultancy work;
- Expanding authority of provinces to decide on divestiture of SOEs with capital up to five billion VND instead of 1 billion permitted before;
- Establishing an Assistance Fund for Restructuring and Equitizing SOEs to finance severance payments, early pension payments and retraining for redundant workers -- minimizing the negative social impact of SOE reforms on workers;
- Adopting a comprehensive five-year SOE-reform plan with annual target for the first three years.
- Equitizing 185 SOEs;

2001

- Establishing a quarterly monitoring system for 200 large highly-indebted SOEs, and revising a decision to clarify reporting requirements and introducing sanctions against late reporting;
- Issuing government's instruction for a moratorium on establishing new SOEs by local People Committees and line ministries until further notice (Official Dispatch 574/CP of June 25, 2001);
- Establishing the Financial Investment Company under the Enterprise Law, to represent the interests of the State as owner and co-owner of SOEs and issuing decree 63 on transforming SOEs into one-member limited liability companies are steps towards disentangling the complex ties between Government and SOEs (October 2001);
- Equitized a total of 194 SOEs.

2002

- Allowing managers of equitizing enterprises to purchase shares in excess of the number of shares subscribed by employees, requiring 30 days public notice prior to announcement of equitization, and clarifying potential conflicts between the SOE Law and the Enterprise Law (Decree expected to be issued by May 2002);
- Issuing Decree 41/2002/ND-CP, April 2002 on the policies towards employees made redundant because of SOE reform

Strengthening the Banking System, 1998 – March 2002

Government actions include

1998

- Establishing a Bank Restructuring Committee and initiating restructuring of non-state Joint-Stock Banks (JSBs) in HCM City;
- Issuing regulations for intervening in troubled banks including conditions for "Special Control Regime" of the central banks;

1999

- Completing SBV's financial assessment of all JSBs and independent audits of 4 large SOCBs by international auditors and developing preliminary restructuring plans for all JSBs;
- Closing and merging 4 JSBs in HCM City;
- Issuing prudential regulations for banking operations, financial ratios for safe operation of credit institutions; authority of banking inspectors; deposit insurance and collateral;

2000

- Issuing new regulations for operations of banks in respect of calculating provisions against their non-performing loans on a quarterly basis (Decision 488);
- Assigning full responsibility and accountability for all aspects of the credit cycle to banks; requiring loan officers in commercial banks to check not only the capacity of the borrower to repay a loan but also to check the feasibility and viability of the project that is to be financed (Decision 284, August 2000);
- Allowing lending on an unsecured basis to state owned enterprises and foreign invested enterprises (Decision 266, August 2000);
- Replacing fully administered interest rates on dollar and dong loans by a more flexible interest-rate system under which the dollar rate is anchored in SIBOR, while the dong rate is allowed to vary around a SBV base rate subject to a ceiling rate (Decision 241 to 244, August 2000);
- Issuing regulations for the organization of SBV's supervision of the banking sector -- the State Bank Inspectorate (Decision 270, August 2000);
- Supplementing the existing legislation for foreign banks with detailed provisions concerning the organization and operations of state owned banks and JSBs, broadening the range of non-core activities (Decree 49, September 2000);
- Clarifying provisions for registering secured transactions (Circular 10, September 2000);

Strengthening the Banking System, 1998 – March 2002 (cont'd)

2001

- Providing guidelines for the realization, either through sale or seizure of secured property, for recovery of debts by credit institutions (Joint Circular 03/2001, April 23, 2001);
- Simplifying procedures governing deferred L/Cs, by cutting the number of requirements from six to two -- effective June 10, 2001;
- Adopting a detailed restructuring plan for the four large SOCBs including annual milestones (i.e. actions and targets) that need to be achieved to obtain phased re-capitalization funds from Government;
- Broadening the scope for financial leasing and improving regulations to create a more attractive operating environment for domestic and foreign leasing companies (Decree 16/2001/ND-CP, May 17,2001);
- Freeing interest rates on foreign currency lending by banks in Vietnam and off-shore banks (Decision 718/2001/QD-NHNN, May 29, 2001, and Decision 980/2001/QD-NHNN, August 1, 2001);
- Issuing guidelines for the implementation of the Ordinance on Commercial Paper from 1999, including on the form and language of, and conditions for guaranteeing and pledging commercial paper, and the respective obligations of the different parties to such commercial transactions (Decree 32/2001/ND-CP, July 5, 2001);
- Increasing autonomy of commercial banks by allowing them to set up internal systems for clearing payment transactions without State Bank involvement, but with State Bank permission (Decree 64, September 20, 2001)
- Providing a framework for cross-border payment transactions, recognizing, for the first time, that international practices can be used to govern cross-border transactions if Vietnamese law does not require otherwise (Decree 64 and its implementing decision, September 20 2001)
- Allowing all joint-venture and foreign banks operating in Vietnam to take collateral in the form of land from local clients, i.e. in the form of land use rights and land certificates (Decree 79/2001/ND-CP, effective November 16, 2001) ;
- Allowing joint-venture banks to receive hard-currency deposits from Vietnamese clients (Decision 1380/2000/QD-NHNN, effective November 20, 2001);

2002

- Establishing a National Register Agency for Secured Transaction under the Ministry of Justice to facilitate transactions by credit institutions and entitling third parties to access information related to secured transactions. The registry opened for business March, 12 2002;
- Enhancing the process for resolution of bad loans by allowing domestic commercial banks and credit organizations to sell collateral backing loans directly in the market at market determined prices instead of going through state-owned agencies (Directive 01/2002/CT-NHNN, January 2002);
- Bringing banking regulations closer to international accounting norms, by stating that should customers fail to repay an installment the entire loan can be accelerated and classified as overdue, and giving banks more discretion in setting interest rates on overdue debt (Decision 1627/2001/QD-NHNN, effective February 1, 2002);
- Permitting banks to make decisions on the terms of any given loan, including domestic banks' lending to foreign borrowers in Vietnam, such as maturity and interest rate, and generally devise new forms of lending provided they are not forbidden by law, including, for the first time, the possibility of overdraft lending (Decision 1627/2001/QD-NHNN, effective February 1, 2002);

Managing Public Resources Better, 1998 – March 2002

Government actions include:

1998

- Publishing 1997 final accounts and the 1999 budget plan by the General Statistical Office, in the form of a freely available booklet;
- Providing fiscal information to international organizations and donors in a GFS-consistent format as well as to all relevant Government agencies (Decision 225 and 1581);

1999

- Improving fiscal management by requiring improved accounting of foreign grants and clarification of roles in management of external debt and in debt monitoring (Decree 90 in 1998 and Circular 22 in 1999);
- Clarifying processes for managing fees, charges and revenues raised and spent by spending agencies;

2000

- Completing and publishing the Public Expenditure Review – Managing Public Resources Better.
- Issuing a regulation (MOF's Circular 118/2000/TT-BTC) on commune budget management and a simplified budget classification to provide a framework for improved accounting, reporting and management of budget commune and other financial activities at commune level
- Starting a pilot of block grant budgeting for administrative agencies in Ho Chi Minh City to permit more autonomy to pilot agency and encourage efficient use of resources and appropriate re-allocation where needed.

2001

- Developing a detailed public expenditure management improvement action plan with a timetable for next three years.
- Establishing an inter-agency working group to coordinate implementation of PER-2000 recommendations.
- Completing provincial PERs for Hochiminh City and Quang Binh.
- Issuing a revised regulations (PM's Decision 182/2001/QD-TTg) on fiscal transparency to allow more budgetary information to be made public and to enforce implementation by lower level of government.
- Initiating pilot development of MTEF for education sector.
- Adopting a decision (PM's Decision 192/QD-TTg) to expand Ho Chi Minh City's block grant budgeting pilot to other provinces and central agencies.
- Passing an amendment to the Constitution to provide a full autonomy to Provincial People's Council to approve and allocate its budget.

2002

- Posting, for the first time, budgetary information on MOF's Website.
- Issuing a Decree (Government's Decree 10/2002/ND-CP) on new financial management mechanism for public service delivery agencies to provide greater degree of autonomy, flexibility and certainty to these agencies in managing their financial resources.

LIST OF EXHIBITS

1. Department of Commerce Kazakhstan Decision
2. Kazakhstan and Vietnam Economic and Demographic Data
3. World Bank *Vietnam Economic Monitor* (Autumn 2001)
4. U.S.-Vietnam Bilateral Trade Agreement
5. Asian Development Bank *Asian Development Outlook 2002: II*
6. World Bank *Vietnam Economic Monitor* (Spring 2002)
7. IMF *News Brief No. 02/53* (June 21, 2002)
8. IMF *Vietnam and the IMF* (July 22, 2002)
9. Remarks by President Bill Clinton (July 13, 2000)
10. Testimony by Former USTR Charlene Barshefsky (September 19, 2000)
11. Remarks of U.S. Ambassador Raymond Burghardt (September 6, 2002)
12. U.S.-Vietnam Trade Council *Catalog of Legal Updates* (September 15, 2002)
13. IMF *Second Review* (July 2002)
14. State Bank of Vietnam Decision No. 679/2002/QD-NHNN (July 1, 2002)
15. Economist Intelligence Unit *Country Commerce Vietnam* (April 2001)
16. Congressional Research Service *Vietnam's Labor Rights Regime* (March 23, 2001)
17. US Embassy Hanoi *FY 2002 Country Commercial Guide: Vietnam*
18. MOU Between the U.S. Department of Labor and Vietnam's Ministry of Labor
19. Letter from Minister of Trade Vu Khoan to USTR Charlene Barshefsky (July 13, 2000)
20. Susan Adams, IMF Hanoi Office *PRGF Experience in Vietnam* (July 2002)
21. IMF *First Review* (January 2002)
22. IMF *Vietnam: Selected Issues and Statistical Index* (January 2002)
23. Ordinance No. 40-2002-PL-UBTVQH (April 26, 2002)